

# “THE TREASURE HUNT”: A REGULATED ACTIVITY?

**Abstract:** The present study aims to analyze a situation that has been, for a long time, a real challenge for professionals in history and archaeology: metal detection and accidental discoveries. The Romanian legislation is definitely deficient when it comes to the regulation of this area of law. A brief look at the legislation of other states can provide examples for a better regulation. The problems are serious, and legislative changes are imperative and urgent.

**Keywords:** *cultural heritage, archaeology, legislation, international regulation, metal detection.*

## INTRODUCTION

An impressive amount of adventure literature, followed by entire series of movies like Indiana Jones have created an imaginary which has stoked, in the minds of many, the desire to search, the desire for the spectacular, for the discovery (almost exclusively) of priceless treasures or artifacts, which are even imbued, in the imagination of some, with various magical powers, as they have been accustomed to by the fantastic elements of certain productions (especially) of the cinematic kind. The phenomenon is not new<sup>1</sup>, but it is particularly widespread now. For some, it is mere curiosity and interest, from the perspective of an enthusiast, aficionado or admirer of the profession and domain, while, for others, such an interest rather reflects a search for the sensational or a wish to become rich in a fast and easy manner.<sup>2</sup>

For any archaeologist, probably the most frequent questions that they receive from friends, acquaintances, relatives or visitors of the archaeological site is, of course, “what have you found?” or “what are you looking for?”, exclusively centering on priceless objects, as well as the already “famous” question related to treasure, known to all archaeologists.

Of course, the disappointment of these people is, most frequently, of comparable size, as the context surrounding said research is explained in short and in good faith to them, and the sensational element is absent, the interest of the visitor abruptly vanishes, not infrequently turning into irony or lack of politeness in the best of cases.

In such a context, it is difficult to explain to certain people who put it this way that archaeological research has other purposes and other objectives and is even far removed from the desire to discover treasures. Obviously, priceless artifacts are welcome, and any archaeologist who makes such a discovery can only be happy and consider themselves lucky in certain situations. But the artefact is priceless to an archaeologist not for the intrinsic value of the

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<sup>1</sup> PURDEA 2019, 139-221.

<sup>2</sup> MESAGERUL DE SIBIU, 26 May 2019, <https://www.mesageruldesibiu.ro/>: <https://www.mesageruldesibiu.ro/augustin-lazar-a-vorbit-la-sibiu-despre-fenomenul-indiana-jones/>. Accessed 7 May 2020.

material it is made of, as, most of the times, the increased value stems from its rarity, the information it transmits, and the connections of said discovery to other similar ones or discoveries that can elucidate certain aspects from the past. There are multiple situations in which an archaeologist is less happy about a gold coin, discovered without any context, and, as such, almost impossible to capitalize on scientifically, than an item from a less noble material, which encompasses, however, a consistent piece of information.

Contrary to what many imagine, archaeology is a science, and one of the most technical ones at that. Obviously, its most frequent ties are with history and its auxiliary sciences (especially for the periods where other sources through which to obtain information are quasi-nonexistent), which are themselves often considered to be far from a real scientific endeavor, as we are now in the situation where everyone is great at history, some for the simple reason that they had a subject bearing this name during high school.

Exhaustive archaeological research mandatorily entails the correlation of several pieces of information obtained from various points of the dig site which, when interpreted together, lead to historical information, which is the very purpose of research.

Archaeological excavation is not done at random, nor without any sort of rules. Unfortunately, there are not too many regulations in this domain of excavation technique either, the only normative one being a standard issued by the National Institute of Heritage.<sup>3</sup> We will stop here for a second to underline the fact that this standard which focuses on the manner in which archaeological excavations are carried out is 26 pages long, including annexes, and the simple reading of the text displays not only how schematic it is, but also its insufficient regulation. As a result, they are used by archaeologists to supplement more complex and complete excavation manuals and standards with an English or German origin.

There are also research techniques that are non-destructive, such as remote sensing, geophysical or geochemical research, regional surveys, etc., but archaeological excavation is, *par excellence*, an essentially destructive technique. This is the very reason that it is extremely important for some rules to be obeyed, both while the research is being performed, as well as afterwards.

As for the actual excavation technique, without going into the details, we will underline that *in situ* research is vital, based on a pre-established plan (in grid cells or sections), with the possibility of a subsequent precise identification of places that have already been researched. The excavation is stratigraphic, commencing from the upper layer of the

<sup>3</sup> Available at <http://cimec.ro/Legislatie/03%20Sapatura%20arheologica%20rev17.pdf>, Accessed on 07.05.2020. Full name: *Standarde și proceduri arheologice: săpătura arheologică (Archaeological Standards and Procedures: The Archaeological Excavation)*. According to the information communicated by the specialists and to the verifications carried out, it is the only internal "document" with this purpose. Moreover, from a juridical standpoint, these standards bear an extremely unclear status, similar to all of the guides, methodologies and standards in various domains, all of them assimilable, at most, to a normative administrative document, issued by the National Institute of Heritage, a public institution, practically founded through Law 329/2009 published in the Official Gazette 761 of Nov. 9, 2009, by merging several other pre-existing institutions and commissions.

soil and heading deep into the virgin layer, never touched by humans. Every artifact is harvested, while indicating the layer it has come from, indicating its positioning in said layer and certain details referring to the discovery, mentioned in the excavation journal, on the sketches drawn onsite, on the excavation photos, and, respectively, the object inventory.<sup>4</sup> In this regard, archaeology has very many aspects in common with the domain of accounting, of course, in a different register.

We have described above in an extremely summary manner these few technical aspects in order to underline the importance that is attributed and must be attributed to such details, which, in fact, establish the relationship, an essential relationship, between the artifact and the context that it originates from. Without this relationship, an object is, regardless of how priceless it may be, a simple object, and what is important is actually its dating, the context of its use, the duration of its use in everyday life, etc., all information that is closely connected to the layer from which this object comes.

This article does not aim to analyze this issue in archaeological parameters however, as much as it aims to start a legal discussion related to this issue, taking into consideration the sanctioning, criminal law side of it less than the preventive one along with the legal tools that are handy or possible, as the article represents the start of a research process on broader themes focusing on the legal protection of heritage.

## THE CURRENT SITUATION

The scientific aspects that we have mentioned above are, however, quite out of the reach of the grand majority of amateur researchers and their ideas. Their enthusiasm is more rarely motivated by a hunger for knowledge.

These persons and their passion have been, for a long time, a problem for Romanian archaeology.

The problem is that, for some time now, those who wish to make such discoveries have more than a simple spade or pickaxe at their disposal, as they have access (many times, more access than museums) to much more advanced technology, which allows the identification, with a higher or lower precision, of certain artifacts hidden under the earth. Metal detectors already have prices that are convenient for all, they are accessible financially to almost everyone, and their attainment does not require considerable effort, as they can be easily purchased even from the websites of large retailers, where, along with detergents, laptops, furniture, food, etc., one can buy, with a simple click, metal detectors as well. Of course, there are also, for those who are more exacting and have more financial means, specialized websites with expensive and professional products.<sup>5</sup>

There are obviously people acting in good faith as well, who do nothing but follow their passions, but, at the same time, there are definitely numerous other people carrying out

<sup>4</sup> GREEN/MOORE 2010, *passim*.

<sup>5</sup> A simple search on such a site has identified almost 50 results, with prices varying from 88 lei to over 8,000 lei, while a site dedicated to such products, which sells everything from tools for amateurs to extremely advanced devices, has over 3,000 types of products, with prices ranging from 89 euros (including toy versions at 65 euros) to 12,000 euros.

non-legal archaeological prospecting activities, aided by this detection technique, which is increasingly more advanced, and the results of their “work” do not, in any situation, reach museums or contribute to any scientific breakthrough, but instead wind up on the “black” market of artistic and heritage objects. Even potentially using said object for a scientific purpose would be extremely problematic, with regards to the degree to which the information obtained is correct, given that these objects are removed from their archaeological context, an essential aspect of archaeology.<sup>6</sup>

A sizable part of this type of activity remains undiscovered and unsanctioned, probably the largest part of it. For the rest, there are considerable efforts being made to identify the people committing such offenses, and especially to retrieve these goods.

The examples are multiple, the most famous and important, which have also benefitted from intense media coverage, are those related to the famous Dacian bracelets, as the region of the Şureanu Mountains is one of the areas preferred for such illegal activities.<sup>7</sup>

The same area is the origin of a series of monetary treasures and coins identified in various investigations of certain offenses, all originating in the non-legal market where heritage objects are trafficking material.<sup>8</sup>

These people who call themselves “amateur archaeologists”<sup>9</sup>, whether well-intentioned or not, are wreaking havoc in various areas of the country, whether it is the western side<sup>10</sup>, Moldova<sup>11</sup> or Oltenia<sup>12</sup>. The number of articles drawing attention to this problem is very large, and the problem is again current due to the juridical consequences that it produces in the pursuit to add the Roman *limes* section (the border of the former provinces of the Roman Empire) found on Romanian soil to the UNESCO Heritage List, a procedure that may be endangered by these illegal operations.<sup>13</sup>

We will not insist on these aspects which fall within the scope of criminal law, but could not, however, omit. We will not insist on them not because they are less important or even admirable in terms of the methods and difficulties encountered, but because, given the difficulties to retrieve poached objects and the costs of all of these research operations, we are of the opinion that, beyond the work falling

<sup>6</sup> BĂRBULESCU 2016.

<sup>7</sup> LAZĂR 2013, 49-62; OBERLANDER-TĂRNOVEANU 2013, 73-126; DIGI 24, 18 March 2018, <https://www.digi24.ro/special/campanii-digi24/romania-furata/romania-furata-cine-are-interesul-sa-continue-furturile-de-aur-din-siturile-arheologice-897457>. Accessed 7 May 2020.

<sup>8</sup> DIGI 24, 11 Sept. 2016, <https://www.digi24.ro/magazin/timp-liber/cultura/atentat-la-patrimoniul-braconierii-culturali-vaneaza-tezaurul-dacic-564067>. Accessed 7 May 2020.

<sup>9</sup> A totally incorrect term, as shown by an archaeologist from the Museum of Alba-Iulia in the quoted article, given that archaeology is a profession for which higher education, enrolling in the Register of Archaeologists, etc. are necessary (no one ever speaks of “amateur physicians,” “amateur engineers,” etc.)

<sup>10</sup> Timiș online, 7 April 2016, <https://www.tion.ro/stirile-judetului-timis/cautorii-de-comori-principalul-adversar-al-arheologilor-din-vestul-tarii-ei-cer-o-noua-legislatie-pentru-detinerea-detectorilor-de-metale-497547/>. Accessed 7 May 2020.

<sup>11</sup> MERTICARIU 2015.

<sup>12</sup> DESCOPERĂ, 21 March 2018, <https://www.descopera.ro/dnews/17071926-judetul-iubitorilor-de-comori-si-istorie-exista-un-detector-de-metale-la-doua-localitati-se-dau-prea-usor-autorizatiile>. Accessed 7 May 2020.

<sup>13</sup> PURIŞ 2020.

within the scope of criminal law, serious measures must start to be taken in order to, first of all, successfully achieve prevention. We believe that there are two main ways through which to veritably and seriously prevent such activity. The first is the one that, in fact, depends on the increase of the degree of security in all archaeological reservations, and the other is related to the existing legislative regulations, which we will discuss in the following.

These regulations are, however, very much behind these trends, the technological advancements, and the momentum that such occupations have gained.

We will analyze in the following certain internal, but also international aspects, attempting, at the same time, to also present other various solutions to implement on an administrative level, such that we do not reach the stage where criminal law becomes exclusively involved, and the criminal sanction is the only possible one, without it rendering possible the remedy of any potential damages.

Currently, the persons who own and / or sell metal detectors “are obligated to obtain a prior authorization from the police inspectorate of said county, the General Police Directorate of the Municipality of Bucharest, within whose territorial radius they have their residence or, by case, their office, and register with these authorities” („sunt obligate să obțină în prealabil autorizația inspectoratului de poliție al județului respectiv, a Direcției Generale de Poliție a Municipiului București, în a căror rază teritorială își au domiciliul sau, după caz, sediul, și să se înregistreze la aceste autorități”<sup>14</sup>). Those who wish to obtain access to detectors or use these detectors on archaeological sites also need prior authorization from the Ministry of Culture.<sup>15</sup> Violating this latter article constitutes an offense, whose penalty is 6 months to 3 years in prison.<sup>16</sup> The same normative text also establishes ownership of metal detectors without the authorization provided for under art. 5 par. 10 as a contravention sanctioned with a fine between 25,000 lei and 75,000 lei, as well as the confiscation of the detectors.

What is extremely strange and absurd from a legislative standpoint is that there is an additional condition set for the specialized personnel who are entered into the Registry of Archaeologists, respectively the obtainment of a permit from the Ministry of Culture<sup>17</sup>, as failing to obtain it also constitutes a contravention<sup>18</sup>.

Basically, those who own detectors in the capacity of natural persons can theoretically obtain an access authorization for archaeological sites from the Ministry without needing any additional permit, while specialists, those for whom the procedure should obviously be more favorable, also need this additional permit.

On top of these regulations, we have the obtainment procedure, which entails the drawing up of a request, submitted along with a few documents that do not pose any

<sup>14</sup> According to art. 5 par. 10 of GO (OG) no. 43/2000 published in the Official Gazette no. 45 of Jan. 31, 2000 and republished in the Official Gazette no. 951 of Nov. 24, 2006.

<sup>15</sup> According to art. 5 par. 13 of GO no. 43/2000.

<sup>16</sup> According to art. 26 par. 1 letter g) of GO no. 43/2000 published in the Official Gazette no. 45 of Jan. 31, 2000 and republished in the Official Gazette no. 951 of Nov. 24, 2006.

<sup>17</sup> Art. 5 par. 12 of GO no. 43/2000.

<sup>18</sup> Art. 26 par. 1 letter h) of GO no. 43/2000.

issues (ID card, proof of ownership of the detector, proof of payment of the tax, which is small, and the criminal record certificate), with the County Police Inspectorate as the issuer.<sup>19</sup>

Even this registration is problematic, because, in reality, there is no exact knowledge of the official number of people who legally own such a detector, as numbers like 800 or 1,200 have been given, so there is nothing clear here.<sup>20</sup>

Additionally, we can mention the obligation that establishes the fact that objects discovered by accident must be handed over, within 72 hours, to the branches of the Ministry of Culture.<sup>21</sup>

Basically, that is all that the regulation for owning and using detectors comes down to in our entire legislation, these norms having been adopted regardless in the context of preparing to accede to the European Union.

We cannot but notice that we are dealing with an extremely easy administrative procedure, greatly facilitated by the reduced prices of the products of this kind. If, at the time that the regulations were adopted, these products were rarer and more costly, then the number of those who could buy them would have been lower, and now this possible impediment has disappeared. In any case, for those who were intent on breaking the law, the initial prices did not represent a problem, with the number of enthusiasts possibly being lower due to the insufficient income to make such purchases.

In regards to these provisions, there is, first of all, the problem of the violations of the prohibitions concerning archaeological sites and the lack of reporting or the deficient or late reporting of these discoveries, qualified exclusively and incorrectly as “accidental” by the lawmaker. Basically, one can never know for sure whether all discoveries are declared, whether those who are declaring and handing over discoveries are telling the truth in what concerns the number of the identified artifacts and their quality, etc. (in a situation in which the Internet displays numerous archaeological pieces “for sale” without naming their origin or while indicating a dubious origin, making this phenomenon even more complicated to control).

Under the circumstances of this clear legislative retardation in relation to the reality at societal level, it may be opportune to move past the discussion stage and start developing concrete measures related to the updating of heritage legislation.<sup>22</sup>

<sup>19</sup> The technical norms from May 31, 2004 on owning and selling metal detectors, approved by Order 251 of May 31, 2004, published in the Official Gazette 704 of August 4, 2004.

<sup>20</sup> BĂRBULESCU 2016.

<sup>21</sup> Art. 10 of GO no. 43/2000, already mentioned, which shows that “Movable assets resulting from accidental archaeological discoveries shall be handed over by the person who has made the discovery, within a maximum 72 hours, to the public service branches of the Ministry of Culture and Cults” („Bunurile mobile rezultate în urma descoperirilor arheologice întâmplătoare vor fi predate de către descoperitor, în termen de maximum 72 de ore, serviciilor publice deconcentrate ale Ministerului Culturii și Cultelor”).

<sup>22</sup> There is a project for a Heritage Code, not unlike the ones of other states (e.g. Great Britain, where something similar exists, respectively a *Treasure Act*, which regulates the legal regime of treasures, or France, which has a heritage code that is titled as such), which stopped at the phase of Preliminary Sentences of the National Cultural Heritage Code. These sentences, which acknowledge the “pressing” nature of this issue, have been adopted by Government Decision no. 905/2016, published in the Official Gazette of

## INTERNATIONAL REGULATIONS

In this context, it is, of course, opportune to identify the international regulations concerning this issue, or at least the European, Union or national ones.

The European framework regulation is the Valletta Treaty or the Malta Convention, as it is also called, which does not distinctly establish anything related to the regulation of detection activity and the use of metal detectors in the domain of archaeology, but does obligate all states to adopt internal legislations that regulate the authorization conditions for this type of activity.<sup>23</sup> Other European regulations concern the circulation and export of cultural goods.<sup>24</sup>

We must also take into consideration the fact that, as opposed to our country, in Western Europe, the interest given to archaeology and regulations is already something usual, and the areas researched are far vaster than those in Romania in terms of the total area subject to archaeological research.

Great Britain is, obviously, one of the states that have developed this domain the most, and their regulations stand out also due to the common law system applied. There is a succinct heritage legislation called *the Treasure Act*<sup>25</sup>, with a relatively summary text, which is, however, supplemented not only by various successive amendments and the case law, but also by regulations that are closely connected to the right to own property and the legal regime of each land. Basically, a distinct permit to use metal detectors (or drones) must be requested for each place where the performance of research is desired. The regime of certain properties fully forbids the use of detectors with the exception of the situation where said activity is part of an ample research project, which will be the subject of a convention between the owner of the land and those conducting the research, as is the case with the famous National Trust.<sup>26</sup> Violating the regulations represents an offense. Other such organizations allow the conditional use of detectors.<sup>27</sup>

What is interesting is that, within these activities, a deontological code for those carrying them out has formed, a system of associations whose purpose it is to check and even regulate compliance with the norms, with rules that are very clearly established for several manners of detection.<sup>28</sup>

Given the similarities of the systems of law, we will make a short reference to the situation in the United States of America, where the norms are somewhat similar, even if they are regulated in more detail. For example, it has been established that permits are issued for the area where the

December 27, 2016, but there has been no development since.

<sup>23</sup> Art. 3 iii) of the European Convention on the Protection of the Archaeological Heritage, adopted at Valletta, on January 16, 1992, accessed online at: <https://rm.coe.int/168007bd25> on May 10, 2020.

<sup>24</sup> Directive 93/7 on the return of cultural objects unlawfully removed from the territory of a Member State, and subsequent amendments, and EEC Regulation no. 3911/92 on the export of cultural goods.

<sup>25</sup> <http://www.legislation.gov.uk/ukpga/1996/24/contents>. Accessed on May 8, 2020.

<sup>26</sup> <https://www.nationaltrust.org.uk/features/metal-detecting-on-our-land>. Accessed on May 7, 2020.

<sup>27</sup> <https://www.thecrownestate.co.uk/en-gb/what-we-do/on-the-seabed/coastal/metal-detecting-and-drone-flying/>. Accessed on May 7, 2020.

<sup>28</sup> <https://finds.org.uk/getinvolved/guides/codeofpractice>. Accessed on May 7, 2020.



activity is planned, the list where detection is permitted being very clear (they are each identified through numbers on the map, there are bans during certain days for certain areas, etc. We hereby underline that, even in an area for which a detection permit has been issued, there may be certain points where it is forbidden).<sup>29</sup> There is an obligation to report any discovered object within 48 hours, if it is a significant object, at which point the authority will be the one deciding whether the object is important or not from the point of view of heritage. The definitions are very clear, for example, objects deemed significant are of historic, paleontological, or archaeological character, or any coin or object whose value exceeds its intrinsic value, and, for coins, this is set at a relatively small sum of 25 USD. The obligation to report does not only apply to every separate object, but also covers the entire year, as the owner of a detector is obligated to annually hand over a list of all objects found in the previous year as well. One of the most interesting restrictions has to do with the obligation to put back the displaced earth and greenery, as well as the forbiddance to use tools that exceed 4 inches (10 cm) in width and 12 inches (30 cm) in length for digging.<sup>30</sup>

Ireland, although so close from a geographical standpoint to Great Britain, has regulations that differ by much, being not only more restrictive, but also extremely specific in what concerns the sanctions applied. The use of detectors falls within the scope of the competences of the Ministry of Culture and Heritage, which is also the institution issuing the permit to use detectors for archaeological purposes (usually, according to the normative documents in force, these permits are given to archaeologists only). Museums are also the institutions to which, within 96 hours, any object found on the land researched must be declared and handed over. The fines for violating the regulations concerning archaeological material (detection or excavation without approval, failure to declare found objects, etc.) are exorbitant (they can reach up to 126,972 euros), and can also be augmented with a prison sentence (of up to 12 years). The simple promotion of detectors for archaeological purposes is liable for a fine of up to 2,500 euros. Basically, Ireland fully limits the use of detectors by non-professional archaeologists and drastically sanctions any violations.<sup>31</sup>

One of the states with the most archaeological research is, of course, France, which has both national and regional regulations. The Heritage Code institutes a monopoly of the state on archaeological excavations (all types of excavation must be authorized), and the obligation to obtain an authorization for the use of detectors, granted according to the capacity in which the applicant requests it, which is then followed by the establishment, through a decree by the State Council, of the precise conditions for the issuance of this authorization.<sup>32</sup> For those who wish

to use metal detectors, an authorization issued by the competent prefecture is necessary.<sup>33</sup> Conducting works without authorization and the destruction, degradation or deterioration of relics is considered to be an offense, falling under the scope of the Criminal Code, and is sanctioned with 7 years in prison and a 100,000 euro fine, in case the land is already subject to archaeological research, the mere entry into such a site can be sanctioned with a 7,000 euro fine. The Heritage Code separately sets a fine of 7,500 euros for carrying out excavations without an authorization or failure to comply with said authorization<sup>34</sup>.

One other state that requests authorization for the use of metal detectors is Switzerland, where each canton sets its own regulations. The authorization contains very many conditions, which underlines the restrictive nature of the norms. Thus, metal detector owners are obligated to participate in the annual reunion organized by the Archaeological Service of the Canton (which is also the institution granting the authorization), they are fully forbidden from carrying out excavations in certain areas (e.g. forests) or at depths that exceed 20 cm, the discovered objects need to be labeled (indicating all of the details behind the discovery) and handed over, along with reports that must be submitted annually regardless. It is also the obligation of the detector owners to obtain the consent of the land owners and carry out any sort of activity at their own risk, and it is also mandatory to report any situations where persons are discovered prospecting with no authorization.<sup>35</sup>

In Belgium, there is an increased decentralization in a context where a general heritage code<sup>36</sup> establishes the general framework to approve metal detection activity along with the general heritage rules, which are supplemented by those issued by the regional authorities (as there are distinct heritage codes), noting, however, that the detector authorization activity is handled by the same authorities. Such a request form shows not only the details that must be indicated by the applicant (detector type, motivation for filing the request), but is also a declaration of commitment through which the applicant undertakes to participate in the information meetings of the authority and comply with the best practices guide in the domain of detection.<sup>37</sup>

Germany also regulates at the level of each land for detection activities and archaeological excavations, which must be authorized, with the issued document also being valid for a year, as was the case with all of the countries we have previously presented. Also obligatory is the participation

<sup>29</sup> As an example, the regulations in San Antonio, Texas - <https://www.sanantonio.gov/Portals/0/Files/Parks/pdf/metaldetectingparks.pdf?ver=2017-02-02-155925-680>. Accessed on May 8, 2020.

<sup>30</sup> <https://www.nycgovparks.org/permits/metal-detector>. Accessed on May 8, 2020.

<sup>31</sup> <https://www.museum.ie/en-IE/Collections-Research/The-Law-on-Metal-Detecting-in-Ireland>. Accessed on May 8, 2020.

<sup>32</sup> [https://www.legifrance.gouv.fr/affichCode.do;jsessionid=1776B00C2B24DFC756E676A196466D6B.tplgfr25s\\_1?id="](https://www.legifrance.gouv.fr/affichCode.do;jsessionid=1776B00C2B24DFC756E676A196466D6B.tplgfr25s_1?id=)

SectionTA=LEGISCTA000006159957&cidTexte=LEGITEX-T000006074236&dateTexte=20090430. Accessed on May 9, 2020.

<sup>33</sup> <https://www.culture.gouv.fr/Regions/Drac-Grand-Est/Patrimoine-Architecture-Urbanisme/Pole-patrimoines/Archaeologie/L-use-des-detecteurs-de-metiaux-soumis-a-autorisation-prefectorale>. Accessed on May 9, 2020.

<sup>34</sup> LASCoux 2017.

<sup>35</sup> [https://www.fr.ch/sites/default/files/contens/saef/\\_www/files/pdf91/conditions\\_site\\_internet\\_fr1.pdf](https://www.fr.ch/sites/default/files/contens/saef/_www/files/pdf91/conditions_site_internet_fr1.pdf). Accessed on May 10, 2020.

<sup>36</sup> [http://www.ejustice.just.fgov.be/cgi\\_loi/loi\\_a1.pl?language=fr&la=F&table\\_name=loi&cn=2013071244&&caller=list&fromtab=loi&tri=dd+AS+RANK#](http://www.ejustice.just.fgov.be/cgi_loi/loi_a1.pl?language=fr&la=F&table_name=loi&cn=2013071244&&caller=list&fromtab=loi&tri=dd+AS+RANK#)

LNK0009. Accessed on May 9, 2020.

<sup>37</sup> Request form <https://agencewallonnedupatrimoine.be/wp-content/uploads/2019/06/formulaire-demande-autorisation-detecteurs-metau>. Accessed on May 9, 2020.

in information meetings and training courses. The goods must be handed over to the competent authorities. Failure to comply with the regulations represents an offense.<sup>38</sup>

Spain also has a national legislation supported by the regional legislation, with the forbiddance to act without authorization and to carry out detection activities on archaeological sites, protected historic areas, etc. being common across the entire state. As an example, Valencia forbids any type of prospecting on beaches, while requiring authorization otherwise, and the applicants are obligated to have an authorized electronic signature, along with a list of documents specific to the state (e.g. a certificate issued by the local authority of Valencia, a certificate issued by the authority responsible with money creation and postage stamp issuance, etc.).<sup>39</sup> Similarly, Andalusia regulates the request of detection authorizations through a local normative text, the historical heritage law that is applicable in the region. Applicants must submit requests indicating the areas and time periods for which they seek their detection activities to be approved. The authorizations are issued by the officials responsible with historical heritage, who must reply within 3 months, with the lack of a reply being equivalent to a rejection of the request. In the situation where the request is approved, the authorization expressly indicates the area and time periods in which the activity shall be conducted and transmits said information to the security forces.<sup>40</sup>

Last but not least, we will also refer to the norms of one of the states with the most archaeological, extremely valuable locations, Italy, qualified by its very internal legislation as “an open-air museum”<sup>41</sup> in its entirety, which has a framework regulation and a heritage code. What is specific for the Italian regulations is the fact that absolutely any object found belongs *de jure* to the state.<sup>42</sup>

### **POSSIBLE SOLUTIONS, LEX FERENDA PROPOSALS**

We have, thus, highlighted the complex issues, the schematic regulations, the numerous irregularities, and the regulations of other states. The question referring to the possible solutions that must be identified remains.

Before we discuss legal solutions, we wish to underline a few aspects.

First of all, it is obvious that the battle between specialists and those who break the law is uneven, in a context where, both legally and financially, it is more difficult for an archaeologist and the museums that they are employed by to own and use a metal detector than it is for a private person.

Second of all, the problem is stringent and its regulation has been protracted for an unacceptable amount of time. With our current norms, as long as good protection and security is not ensured for certain areas,

mainly archaeological sites and reservations, these passions transform into veritable disasters to archaeology that are impossible to remedy.

Of course, theoretically, we can consider that the law is good (according to the idea that the regulation is good, but is not heeded, and so, the problems are related to this sphere of applicability). We, however, consider that, as long as compliance with the norms is rare, and the number and severity of the violations are significant, legislative changes are in order.

We have shown that the norms already have long been outdated, given our current technology, and that they have become inadequate for the society that we live in.

Obviously, the most radical possible measure would be to fully ban such activities. There are, however, those who speak of passions, hobbies, the fact that not all who practice them act in bad faith, of the rights of these persons, etc., but, without a doubt, we cannot weigh the two interests in conflict here against each other: the public interest to regulate and protect all things that are part of heritage, and the right of a private person to exercise a hobby.

In this context, the best option would be this ban, which should be maintained until the point where education (difficult to monitor), but also the ensuring of the protection of the sites (possible) are at Western level.

If we, however, consider a ban to be too drastic, and if we look past the fact that the measures for the implementation of the law must themselves be multiplied, we are only left with the modification of the legal norms regulating this domain.

We can, of course, begin with a few aspects already identified in certain states, respectively mandatory information and the mandatory constitution of associations, organizations partly assuming the role to educate and supervise all those who wish to conduct such detections (similarly to hunters), and it would be belonging to such an association that issuing an authorization to own and use a detector depends on. Such an association can regulate, by itself, the behavior of those pursuing illicit ends, it can create a deontological code that raises people’s awareness concerning these activities and their importance.

Furthermore, we believe that instituting a more complex administrative procedure for issuing an authorization would certainly be opportune. The solution will never reside in raising taxes, given that it is those who have a simple passion who are probably not after gaining income. Moreover, the criminal investigations carried out so far have exposed veritable networks which, of course, can pay the necessary taxes, even if they are raised.

Strict monitoring, through mandatory and more frequent procedures, through more frequent verifications, is, of course, an idea that may be beneficial. Thus, regulations that obligate the person seeking to conduct such prospecting activities to indicate the place and date every single time that they wish to do so could prove much more successful in dissuading those whose purpose it is to break the law, but do not yet have an extreme conviction in this sense.

A combination between the existence of these associations, the obligation to announce these “outings,” while indicating the date and area where the detection

<sup>38</sup> As an example, the regulations from <https://www.archaeologie.sachsen.de/26.htm>, Saxony. Accessed on May 7, 2020.

<sup>39</sup> [https://www.gva.es/es/inicio/procedimientos?id\\_proc=20716#p\\_0](https://www.gva.es/es/inicio/procedimientos?id_proc=20716#p_0). Accessed on May 10, 2020.

<sup>40</sup> Art. 60 of the Heritage Law of Andalusia, <https://www.juntadeandalucia.es/boja/2007/248/d1.pdf>. Accessed on May 10, 2020.

<sup>41</sup> CARABINIERI 2008.

<sup>42</sup> Art. 91 of the Code of Cultural Goods and the Landscape, <https://www.camera.it/parlam/leggi/deleghe/testi/04042dl.htm>. Accessed on May 10, 2020.

will be carried out, and the establishment of certain rules concerning excavation and the restoration of the land to its initial form might, obviously, reduce non-legal activities and also protect the areas where the searches are carried out in case they are conducted legally by non-professionals.

Furthermore, what would also be opportune is the implementation of civil penalty sanctions that are complementary, on the basis of which there is a possibility for a definitive ban (with the definitive suspension of the right to ever use a detector) or a temporary gradual, longer-term ban, depending on the severity of the act, for those who commit contraventions in this domain, such a provision being organic to the logic of civil law and the subjective appreciation related to the classification of the act.

And, finally, prevention could certainly be achieved by raising the sanctions, both pecuniary, in the form of sizable civil penalty fines, as well as criminal, when the acts are perpetrated in restricted areas and when the consequences are grave.

## CONCLUSIONS

We have demonstrated above both the importance of the information coming from archaeological and pseudo-archaeological research, an importance increased especially by the non-recoverability of certain information once lost, at least given the level of our current technology.

Of course, the actions of the prosecutors, the police and the courts of law are not only remarkable, but also necessary given the concrete situation.

The problem of the impossibility to always retrieve these goods is, however, an essential one.

As a result, adopting measures, for which there are models both internationally (as we have shown in the comparative law section), as well as internally (given the similarity with hunting activities, as shown above), is a necessity.

Surely, the urgency of regulation in the domain of the use of metal detectors must be acknowledged. Waiting for the adoption, at a nebulous future time, of a heritage code, which is a complex legislative work, an organic law that is difficult to change and adapted to the technological developments in the domain of detection would be pointless and harmful.

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