

Underwater Archaeology in Greece: The Legal Framework*

In 1824, even before Greek independence had been fully established, the country's first archaeological law was passed defining antiquities as 'the national possession of all Greeks' and instituting the Archaeological Service for the investigation and protection of the country's national heritage.¹ The archaeological legal framework of Greece also foresaw from early on the need for ordinances to protect antiquities located under water. Law 5351 '*on Antiquities*', passed in 1932, designated in its first article that '*All antiquities, movable or immovable, from ancient-most times thereon, found in Greece or Greek territory, in rivers, lakes and on the seabed are property of the State.*'² Times have changed dramatically since then, but legislation until recently had not kept pace. New factors such as tourism and new technologies, have altered the dangers posed to antiquities, and particularly the antiquities of the sea. The need for change was acknowledged in the past decade or so and steps were taken to amend the situation. The effort culminated on June 28th 2002 with the signing into effect of Law 3028 '*On the Protection of Antiquities and by and large of Cultural Heritage.*'³ This new law is a solid foundation for the field of (underwater) archaeology in Greece, both as it stands today, and as it appears in the foreseeable future.

Under the new legal framework, Greece maintains its standing among a group of countries that do not have separate regulations dealing with the protection of their underwater cultural heritage. Instead, Law 3028/2002 deals with the protection of cultural heritage *in general*, recovered from both terrestrial and underwater contexts. Many of the terms and ordinances mentioned for antiquities on land also apply to antiquities found underwater. In addition, and for the first time, there are sections in the law that deal exclusively with the protection of the country's underwater cultural heritage. A summary of the new law seen from the perspective of underwater archaeology follows, beginning with a description of the law's basic framework.

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¹ Agouridis (1997), 182.

² 'πάντα τά εν Ελλάδι καί οιοισδήποτε Εθνικοί κτήμασιν, εν ποταμοίς, λίμναις, καί εν τω πυθμένι της θαλάσσης ευρισκόμενα αρχαία κινητά τε και ακίνητα, από των αρχαιοτάτων χρόνων και εφεξής, είναι ιδιοκτησία του Κράτους.' Κριτζάς (1978), 416.

³ Εφημερίς της Κυβερνήσεως της Ελληνικής Δημοκρατίας, Τεύχος Πρώτο, Αρ.Φύλλου 153, 28 Ιουνίου 2002.

In the first article of Chapter I of Law 3028/2002, '*cultural heritage*' is defined as cultural goods found within the borders of the Greek State, including its territorial waters, as well as other sea zones in which Greece has jurisdiction according to International Law. The law protects the country's cultural heritage from '*ancient-most times until today*' and also provides for the protection of cultural goods originating from Greece regardless of when they were taken from the country or where they are to be found at present.⁴ In addition, the article shows foresight in providing in advance for any future international ordinances granting Greece jurisdiction over areas of the sea beyond its territorial waters, an area of international law that has not yet been fully settled.

In the second article of Chapter I, '*cultural goods*' are defined as those that bear witness to individual or communal activities of man, while '*monuments*' are defined as cultural goods constituting material testimonies and belonging to the cultural heritage of the country. It is recognized that cultural goods require special protection, and it is important to note that from the onset, underwater cultural goods are awarded the same standing as cultural goods originating on land. A series of distinctions are made based on dates (ancient monuments are defined as ranging from prehistoric times until 1830, while more recent monuments are defined as those of post-1830 date) and on whether the monuments are '*movable*' or '*immovable*'. Furthermore, '*archaeological areas*' are delineated as areas on land or in the sea, lakes, or rivers, which contain, or there is reason to believe they contain, ancient monuments. They also include areas which constituted, or there is reason to believe that they constituted monumental, settlement or burial entities pre-dating 1830.⁵ What are termed '*historical landscapes*' complement '*archaeological areas*' and are also brought under the protection of the law. These are areas on land or in the sea, lakes, or rivers, which constitute, or there is reason to believe that they constitute areas of exceptional historical or mythical events, or which contain, or contain signs of, monuments post-dating 1830.⁶

⁴ Άρθρο 1, Εφημερίς της Κυβερνήσεως της Ελληνικής Δημοκρατίας, Τεύχος Πρώτο, Αρ.Φύλλου 153, 28 Ιουνίου 2002.

⁵ '*Archaeological areas*' also include the essential immediate environment surrounding the antiquities.

⁶ Άρθρο 2, Εφημερίς της Κυβερνήσεως της Ελληνικής Δημοκρατίας, Τεύχος Πρώτο, Αρ.Φύλλου 153, 28 Ιουνίου 2002.

The second Chapter of Law 3028/2002 deals with ‘*immovable monuments and areas*’, which are protected by law without there being the need for any administrative action. ‘*Immovable monuments*’ are defined as those which were connected to and remain in the ground, or the bottom of the sea, on lakebeds or riverbeds, and which cannot be moved without damage to their worth as testimonies of the past. Immovable monuments also include the facilities, constructions and the decorative or other elements which constitute inseparable parts of the pre-defined immovable monuments, as well as their immediate environment.⁷ A shipwreck would thus fall under the category of an ‘*immovable monument*.’ Such monuments that date up until, and including, A.D. 1453 belong to the state and are beyond exchange and private property, as are those which have been or are discovered through archaeological surveys and excavations. As for those dating after A.D. 1453 several other parameters are mentioned. When an immovable monument is discovered, the person making the discovery must notify the nearest archaeological, police, or port authority of the find without unjustified delay. The exact location and any other relevant information must be handed over, while following consultation with the Council, the Minister of Culture may grant a monetary reward to the finder. As the inclusion of ‘port authorities’ suggests, this also holds true for underwater monuments. The value of the reward is based on the importance of the antiquities discovered and the contribution of the person who notified the authorities to their discovery and salvage. For underwater archaeology, if the person that notified the authorities of a find is not the owner/tenant of the vessel by which the antiquities were discovered, then the reward is distributed among the owner/tenant and the person that notified the authorities. The Ministry of Culture has recently been very generous in offering rewards for important underwater finds, something it must be commended for. At the same time, however, it is important to address the issue that these rewards may actually be acting as an incentive to actively recover antiquities. This is somewhat addressed in the subsequent sections where the law sets out parameters detailing situations when a rewards are not given.⁸ Any action upon an immovable monument, which could cause, directly or indirectly, the destruction, damage, and pollution, or alter the form of the monument, is forbidden and punishable (see Chapter IX below). Construction

⁷ Άρθρο 1, Εφημερίς της Κυβερνήσεως της Ελληνικής Δημοκρατίας, Τεύχος Πρώτο, Αρ.Φύλλου 153, 28 Ιουνίου 2002.

⁸ Άρθρα 7-8, Εφημερίς της Κυβερνήσεως της Ελληνικής Δημοκρατίας, Τεύχος Πρώτο, Αρ.Φύλλου 153, 28 Ιουνίου 2002.

near antiquities is only allowed after permission of the Minister of Culture, following consultation with the Council.⁹ It is the job of the Ephorate of Underwater Antiquities, the state body in charge of supervising underwater archaeology in Greece, to survey any area under its intendance prior to any construction works.¹⁰

Chapter II of Law 3028/2002 also deals with the establishment of the ‘*archaeological areas*’ defined in Chapter I. Article 12 states that archaeological areas are declared and demarcated, or re-demarcated, based on archaeological research and after decision of the Minister of Culture, upon consultation with the Council.¹¹ What is noteworthy is the existence of a separate article, Article 15, which is devoted exclusively to ‘*underwater archaeological areas*’.¹² It mentions that in these areas it is forbidden to fish, to anchor, and to engage in underwater activities involving the use of breathing apparati, except when a special license has been granted. The precise terms concerning activities within these areas may be determined by joint decision of the Minister of Culture and any other competent minister, upon consultation with the Council. The same terms hold true for the use of underwater breathing apparati, bathyscaphes or other means of surveying the sea bottom, lakebeds, or riverbeds, *in general*, for reasons of protection of the underwater cultural heritage. The Ministry is thus granted the power to control recreational and professional diving, as well as surveying activities. As the Ephorate of Underwater Antiquities proceeds with the task of surveying areas, these areas may be released to the public at large to engage in activities which were previously forbidden. Conversely, in areas that have been surveyed and where antiquities have been found, the Ministry has the power to declare these areas protected zones in which the aforementioned activities are forbidden. Finally, along the lines of what was mentioned above, the article forbids any port works from taking place without a previously acquired license.¹³ These strong powers, introduced or re-asserted in the new law, reiterate the importance

⁹ Άρθρο 10, Εφημερίς της Κυβερνήσεως της Ελληνικής Δημοκρατίας, Τεύχος Πρώτο, Αρ.Φύλλου 153, 28 Ιουνίου 2002.

¹⁰ The Ephorate of Underwater Antiquities also has the power to stop any works in progress if it deems appropriate.

¹¹ Άρθρο 12, Εφημερίς της Κυβερνήσεως της Ελληνικής Δημοκρατίας, Τεύχος Πρώτο, Αρ.Φύλλου 153, 28 Ιουνίου 2002.

¹² Άρθρο 15, Εφημερίς της Κυβερνήσεως της Ελληνικής Δημοκρατίας, Τεύχος Πρώτο, Αρ.Φύλλου 153, 28 Ιουνίου 2002.

¹³ This license supersedes any other construction licenses that may have been previously issued. Άρθρα 12 & 16, Εφημερίς της Κυβερνήσεως της Ελληνικής Δημοκρατίας, Τεύχος Πρώτο, Αρ.Φύλλου 153, 28 Ιουνίου 2002.

placed on underwater archaeology in Greece as it is given precedence over recreational activities, tourism, and construction.

Following the outline established in Chapter Two, Chapter Three of Law 3028/2002 deals primarily with the same issues but concerning ‘*movable monuments*’, essentially defined as those that are not ‘*immovable*.’¹⁴ Without further need for ordinances, all monuments dating to 1453, and those dating up until 1830 that have been a) recovered from excavation or other archaeological survey, and b) been detached from immovable monuments or are religious icons or liturgical objects, are protected by law. In addition to these two subcategories, a) items of significance post-dating 1453 and pre-dating 1830, b) more recent cultural goods of significance which are older than one hundred years and, and c) recent cultural goods of significance dating to the last one hundred years, can all be brought under the protection of the law through a decision by the Minister of Culture, upon suggestion by the Archaeological Service and consultation with the Council.¹⁵ Concerning rewards, matters are rather similar to rewards for immovable monuments with an emphasis placed on the fact that no reward shall be issued to a person who does not act within the law.¹⁶ As before, all actions that could in some way destroy, damage, pollute or alter movable monuments are forbidden and punishable.¹⁷

A noteworthy difference between ‘*immovable*’ and ‘*movable monuments*’ is that, with the latter, the Ministry of Culture may grant a possession permit to individuals while retaining the ownership for the State.¹⁸ Along the same lines, Articles 31 and 32 deal with collectors and dealers of antiquities, allowing some measure of regulated internal trade.¹⁹ These individuals must fulfil certain requirements, one of which is that they must offer assurances as to the item’s protection and preservation. This, depending on the meaning of ‘*preservation*’, may

¹⁴ Άρθρο 1, Εφημερίς της Κυβερνήσεως της Ελληνικής Δημοκρατίας, Τεύχος Πρώτο, Αρ.Φύλλου 153, 28 Ιουνίου 2002.

¹⁵ Concerning the latter, the opportunity to oppose these items becoming public heritage is offered to the owner/holder of the objects, who has one month after the ordinance is issued to bring forth his argument. Άρθρα 12 & 16, Εφημερίς της Κυβερνήσεως της Ελληνικής Δημοκρατίας, Τεύχος Πρώτο, Αρ.Φύλλου 153, 28 Ιουνίου 2002.

¹⁶ Άρθρο 24, Εφημερίς της Κυβερνήσεως της Ελληνικής Δημοκρατίας, Τεύχος Πρώτο, Αρ.Φύλλου 153, 28 Ιουνίου 2002.

¹⁷ Άρθρο 26, Εφημερίς της Κυβερνήσεως της Ελληνικής Δημοκρατίας, Τεύχος Πρώτο, Αρ.Φύλλου 153, 28 Ιουνίου 2002.

¹⁸ Άρθρο 23, Εφημερίς της Κυβερνήσεως της Ελληνικής Δημοκρατίας, Τεύχος Πρώτο, Αρ.Φύλλου 153, 28 Ιουνίου 2002.

¹⁹ Άρθρα 31-32, Εφημερίς της Κυβερνήσεως της Ελληνικής Δημοκρατίας, Τεύχος Πρώτο, Αρ.Φύλλου 153, 28 Ιουνίου 2002.

very well restrict access to a large portion of underwater finds that require particular attention.

While a regulated amount of internal trade may be allowed, the exportation of monuments from within the Greek State is generally strictly forbidden. There are but a few exceptions where '*movable monuments*' belonging to the State may be lent out for specific purposes and periods of time. These include exportation for purposes of exhibition in museums or educational institutions (granted the safe transportation, display and return of the monuments), cases of possible exchange, and conservation and study if the respective work cannot be accomplished in Greece. This is a rational approach acknowledging several possibilities that apply to underwater archaeology, as conservation methods and techniques are recent developments and institutions are constantly developing new procedures. There is no direct law forbidding the entrance of antiquities into the country, but the rulings of the International Convention of Paris are to be upheld.²⁰

Thus far the law has concerned itself with establishing a legal framework pertaining to cultural goods, monuments and protected areas. There remains a final major issue to be addressed - that of archaeological surveys and excavations. The first section of Chapter IV deals exclusively with archaeological investigations, defining '*archaeological field research*' as the investigation of the surface, subsoil, sea bottom, lakebeds or riverbeds, which has as its purpose the location or the discovery of ancient monuments, whether through excavations, land or underwater, surface surveying, or various other manners of scientific investigation. Planned excavations (requiring the issue of an order by the Minister of Culture, upon consultation with the Council) are to be conducted by the Archaeological Service, domestic scientific, research, or educational organizations that specialize in archaeology or palaeontological research, and recognized foreign archaeological expeditions or institutions based in Greece. Every foreign expedition or institution based in Greece can undertake three excavations or archaeological surveys annually and can cooperate with the Archaeological Service in a further three undertakings. Although the institutions themselves have to meet certain prerequisites, the emphasis and responsibility placed on the director of a given project must be stressed. It should be noted that, unless stated otherwise, the responsibilities vested upon the directors of

²⁰ Άρθρα 33-34, Εφημερίς της Κυβερνήσεως της Ελληνικής Δημοκρατίας, Τεύχος Πρώτο, Αρ.Φύλλου 153, 28 Ιουνίου 2002.

underwater projects are the same as those for terrestrial projects and that the mandates concerning excavations are applicable to both.

A director of an archaeological excavation must have five years of field experience and have published at least two articles related to the field of archaeology after obtaining an appropriate academic degree.²¹ The responsibilities of the director include keeping the excavation running according to a time-plan, overseeing that non-destructive methods are utilised, securing the excavation area (including making sure safety regulations for workers and third parties are followed), as well as the preserving and conserving any recovered finds. Finds that may be moved must be delivered to and stored in the nearest museum or approved facility. The director is also in charge of any possible monuments erected and must make provisions for the configuration and display of the site if that is deemed necessary. Finally, he or she must ensure that work is completed within a reasonable amount of time, after which the director must declare the end of the excavation.²² The policy of making a single person primarily responsible ensures that regulations are followed, since the named individual is aware that the State will hold him or her fully accountable for the project. If the responsibility were not focused in such a manner, it would create a grey area, potentially allowing for laxity in following regulations.

As far as the duration of excavations is concerned, permits are limited to a maximum of five years, after which a new decision is required and additional conditions must be met in order to renew it. The same holds true if an excavation that has not been completed is discontinued for more than two years. These two clauses institute much tighter control over excavations and their time frames. The regulations outlining time intervals in which directors must publish material concerning their site (if they are to maintain exclusive rights to publish and eligibility status for directing future excavations) are to the same effect. The Archaeological Service requires annual scientific reports to be submitted, while a preliminary report on excavations must be presented within two years of the beginning of a project and a final published report must be issued within five years of its conclusion. In particularly lengthy excavations, a biannual published progress report is mandated. Concerning rescue excavations, the

²¹ A director may also not have any prior convictions concerning cultural heritage legislation, counterfeiting, bribery, theft, and embezzlement. Άρθρο 36, Εφημερίς της Κυβερνήσεως της Ελληνικής Δημοκρατίας, Τεύχος Πρώτο, Αρ.Φύλλου 153, 28 Ιουνίου 2002.

²² Άρθρα 35-36, Εφημερίς της Κυβερνήσεως της Ελληνικής Δημοκρατίας, Τεύχος Πρώτο, Αρ.Φύλλου 153, 28 Ιουνίου 2002.

director of such projects is given only nine months to present a full report after the completion of work, and must publish the final findings within six years of completion. A very important clause that should be noted is that in cases pertaining to underwater archaeology, all time-limits are doubled.²³ The combination of limited-duration excavation permits and strict publishing time-limits are aimed to address one of the most serious problems in the field today – projects whose results remain unpublished. The aforementioned measures hold promise to ameliorate the situation, but only time can demonstrate their effectiveness.

Chapter V of Law 3028/2002 deals with structures and regulations concerning museums, while Chapter VI concerns access, use, and economic exploitation of monuments and areas under the control of the Ministry of Culture. Chapter VII details generous reparations given to individuals in the form of economic benefits granted for inconveniences caused in the name of public interest, while Chapter VIII deals with the structure and cooperation between central and regional councils concerned with antiquities. What then follows is perhaps one of the most important chapters of Law 3028/2002, Chapter IX entitled ‘*Penal Ordinances*’.

The various articles in Chapter IX cover theft of monuments, defalcation of monuments, receipt and exploitation of monuments resulting from a criminal act, damage to monuments (purposeful and/or negligent), failure to notify the authorities of a discovery, unlawful transferral of a monument from one owner to another, unlawful trade of monuments, unlawful archaeological excavation or survey, unlawful use of metal detectors, unlawful export of cultural goods, unlawful imports of cultural goods, failure to turn over cultural goods, unlawful intervention or execution of work on a monument or archaeological area, and negligent safekeeping, conservation or preservation of monuments.²⁴ It is important to note that there are severe penalties for committing these offences, as many carry with them steep fines and a maximum of two, three and even ten-year jail sentences. The penalties vary according to circumstance, whether the offender is a repeat offender, and also depend on the importance of the monument(s) in question. As a whole, these ordinances are sufficient to provide a significant deterrent. However, it remains to be seen how well they will be enforced and how lenient or strict future court rulings will be.

²³ Άρθρα 36 & 39, Εφημερίς της Κυβερνήσεως της Ελληνικής Δημοκρατίας, Τεύχος Πρώτο, Αρ.Φύλλου 153, 28 Ιουνίου 2002.

²⁴ Άρθρα 53-67, Εφημερίς της Κυβερνήσεως της Ελληνικής Δημοκρατίας, Τεύχος Πρώτο, Αρ.Φύλλου 153, 28 Ιουνίου 2002.

Law 3028/2002 is a thought-out and structured law, well-suited to protect Greece's valuable cultural heritage. The new law repeatedly refers to the country's underwater cultural heritage as a whole, both acknowledging and maintaining its separate nature. In addition, it offers significant initiatives to the Ministry of Culture and hence, at least in part, to the Ephorate of Underwater Antiquities, the government body in charge of the daunting task of monitoring the country's underwater cultural heritage. Upon first impression, and at the moment that is all one can claim, the new law is a powerful piece of legislation. There remains, however, a factor that could weaken it significantly: enforcement. Cooperation between Ephorates, police, port, and customs authorities is needed to a high degree in order to assure the law's effectiveness, while the final stage is to see how strictly and fully the courts will uphold the articles of the new law. Besides the obvious effects resulting from an inadequately enforced law, or a law not exercised to its full extent - offenders going unpunished - more worryingly, the law would risk losing its force as a deterrent. Encouragingly, strict precedents have been set in the recent past in order to prevent this from happening. It is hoped that this will continue to be the case.

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ΠΕΡΙΛΗΨΗ

Ο τομέας της εξερεύνησης του υποθαλασσίου χώρου ευρίσκεται διεθνώς σε εξέλιξη, τόσο από πλευράς διεθνούς δικαίου και διεθνών συμφωνιών, όσο και τεχνολογικών μέσων. Για τον λόγο αυτό, η θέσπιση ενός αποτελεσματικού εθνικού νομικού πλαισίου αποκτά ιδιαίτερη σημασία για την προστασία της υποθαλάσσιας πολιτιστικής κληρονομιάς της χώρας με σκοπό την διατήρηση της ιστορικής μνήμης χάριν της παρούσας και των μελλοντικών γενεών. Με το παρόν άρθρο αναλύονται τα σημαντικότερα σημεία του νέου νόμου 3028/2002 για την προστασία των αρχαιοτήτων και της εν γένει πολιτιστικής κληρονομιάς, δίδοντας έμφαση στον τομέα της εναλίας αρχαιολογίας. Επισημάνεται ότι στον νέο νόμο περιλαμβάνονται για πρώτη φορά άρθρα που αναφέρονται αποκλειστικά στην προστασία της υποθαλάσσιας κληρονομιάς, που πλέον εξισώνετε πλήρως και νομικά με τον επίγειο πολιτιστικό πλούτο της χώρας.

Ο νόμος 3028/2002 αποτελεί το επιστέγασμα πολυετούς εργασίας για την θεσμοθέτηση του όλου πλαισίου καταγραφής, κατανομής, προστασίας και διατήρησης των αρχαιοτήτων, εισάγοντας σαφείς ορισμούς των βασικών αρχαιολογικών όρων (πολιτιστική κληρονομιά, αγαθά, μνημεία, αρχαιολογικοί/ιστορικοί τόποι κλπ.) και προβλέποντας, μεταξύ άλλων, την οριοθέτηση των αρχαιολογικών χώρων, τον καθορισμό ζωνών προστασίας, τις προϋποθέσεις για την διεξαγωγή των αρχαιολογικών ερευνών πεδίου, την λειτουργία του Κεντρικού Αρχαιολογικού Συμβουλίου και του Συμβουλίου Μουσείων, προϋποθέσεις εισαγωγής – εξαγωγής πολιτιστικών αγαθών, αλλά και επιβολή αυστηρών ποινικών κυρώσεων για σειρά παρανόμων πράξεων. Ιδιαίτερη σημασία αποδίδεται στον τομέα συστηματικών ανασκαφών, όπου ο νέος νόμος εισάγει ρητές προϋποθέσεις για την πραγματοποίηση αρχαιολογικών ερευνών τόσο από ελληνικούς φορείς, όσο και από ξένες αρχαιολογικές αποστολές, με έμφαση στα προσόντα που θα πρέπει να έχει ο διευθύνων την ανασκαφή, στην χρονική διάρκεια αυτής, αλλά και στην υποχρέωση δημοσίευσης των αποτελεσμάτων.

Εκτιμάται ότι ο νόμος αυτός αποτελεί ένα καλά δομημένο νομικό πλαίσιο για την προστασία της εθνικής πολιτιστικής κληρονομιάς αφού προσδίδει στο Υπουργείο Πολιτισμού, και κατ' επέκταση στην Εφορία Εναλίων Αρχαιοτήτων, τα νομικά μέσα για την άσκηση της σημαντικής αποστολής της.