

Archaeology, heritage and the law

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The history of the Basel region is also a history of what has been found in its soil. The discoveries of Basel-Gasfabrik, of the Münsterhügel, of Augusta Raurica and of the Kaiseraugst treasure were made during construction works: the building of a gasworks, of a road, of a gymnasium, of a factory, of a housing estate. The growth of the modern city and of its industry has therefore been, at the same time, a vast involuntary excavation. The cantonal archaeological services of Basel-Stadt, Basel-Landschaft and Aargau were created to control this process and to ensure that finds are documented before construction destroys them.¹

The protection of the archaeological heritage raises legal questions that concern the practitioner more often than one might think. The first is ownership. Under Article 724 of the Civil Code, ownerless antiquities of scientific value belong to the canton in whose territory they are found. The landowner cannot claim them, and the finder receives only an adequate reward, which may not exceed the value of the object. This rule, which deviates from the traditional rule of treasure trove shared between finder and landowner, reflects the idea that the cultural heritage belongs to the community.

The second question concerns construction. A developer who discovers archaeological remains must report them and tolerate their investigation, which may delay a project for months and generate considerable costs. The allocation of these costs between the public authorities and the developer is regulated by cantonal law and has been the subject of litigation. For the financing of real estate projects in historic city centres like Basel, archaeological risk is a factor that lenders and investors take into account.

The third question concerns trade. Archaeological objects that leave their country of origin illegally may be claimed back by that country. Switzerland ratified the UNESCO Convention of 1970 on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of

Cultural Property in 2003 and adopted the Cultural Property Transfer Act, which entered into force in 2005.² The Act imposes duties of diligence on dealers and auction houses and allows the return of cultural property to states with which Switzerland has concluded bilateral agreements. Basel, as a centre of the art trade and seat of Art Basel, is directly concerned by these rules, and Part H examines them in the context of the art market and money laundering.

1 Notes

1. On the cantonal archaeological services (Archäologische Bodenforschung Basel-Stadt, Archäologie Baselland, Kantonsarchäologie Aargau) and the protection of archaeological sites under cantonal law, see the respective cantonal legislation on the protection of monuments. To be verified. ↩
2. Federal Act of 20 June 2003 on the International Transfer of Cultural Property (Cultural Property Transfer Act, CPTA, SR 444.1), in force since 1 June 2005, implementing the UNESCO Convention of 14 November 1970 (SR 0.444.1). See in particular Art. 16 CPTA (due diligence of dealers and auctioneers). ↩

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