

LAW NO. 25.743 – PROTECTION OF THE ARCHAEOLOGICAL AND PALAEOONTOLOGICAL HERITAGE – OFFICIAL BULLETIN, 26/06/03

Thursday, 26 June

Summary

Areas of competence and enforcement authorities. Control of archaeological and palaeontological property. Official Register of Archaeological and Palaeontological Sites and Archaeological Collections and Objects or Palaeontological Remains. Permits. Limitations on private property. Infringements and sanctions. Offences and punishments. Transfer of objects. Special protection for palaeontological-type materials. Supplementary provisions.

Text

Adopted: 4 June 2003

Promulgated: 25 June 2003.

The Senate and Chamber of Deputies of the Argentine Nation meeting in Congress, etc, adopt with force of law:

THE PROTECTION OF THE ARCHAEOLOGICAL AND PALAEOONTOLOGICAL HERITAGE

Archaeological and palaeontological objects and property

Article 1 – This law is aimed at the preservation, protection and stewardship of the archaeological and palaeontological heritage as an integral part of the cultural heritage of the Nation and at turning it to scientific and cultural account.

Article 2 – The archaeological heritage comprises movable and immovable items or vestiges of any kind found on the surface, in the subsoil or submerged in territorial waters that may provide information on the sociocultural groups that have inhabited the country from pre-Columbian times up to recent historical periods. The palaeontological heritage consists of organisms or parts of organisms or traces of the vital activity of organisms that lived in the geological past and any natural concentration of fossils in a body of rock or sediment lying at the surface or located in the subsoil or beneath territorial waters.

Article 3 – This Act shall be applicable throughout the national territory.

Areas of competence and enforcement authorities

Article 4 – The State shall be exclusively empowered to:

- (a) exercise stewardship over the archaeological and palaeontological heritage. To that end, it shall adopt measures to preserve, research and publicize it;
- (b) ensure the international defence and custody of the archaeological and palaeontological heritage by preventing and sanctioning illegal imports and exports. To this end, it shall make provision for managing the return of archaeological and/or palaeontological property to its country of origin.

Article 5 – The National Institute of Anthropology and Latin American Thought, attached to the State Secretariat for Culture, shall be the national body responsible for exercising the powers laid down in the preceding Article relating to the archaeological heritage.

The protection of the palaeontological heritage shall be the responsibility of the national body to be established in accordance with the provisions of Article 55 of this Law.

These bodies shall each be responsible for:

- (a) creating and organizing the National Register of Archaeological Sites, Collections and Objects and the National Register of Palaeontological Sites, Collections and Remains, on the basis of information to be demanded of the local administrations;
- (b) creating a national register of offenders and repeat offenders.

Article 6 – The Provinces and the Autonomous Government of the City of Buenos Aires shall be exclusively empowered to:

- (a) establish the competent body responsible for enforcing the Law on Protection of the Archaeological and Palaeontological Heritage or assigning those functions to an existing body;
- (b) organize in their respective administrative areas a Register of Archaeological Sites, Collections and Objects and a Register of Palaeontological Sites, Collections and Remains, preferably based on the methodology adopted by the Enforcement Authority for the sake of better national coordination;
- (c) create a register of offenders in the archaeological and palaeontological field;
- (d) issue permits, through their competent bodies, for surveying and research;
- (e) adjust their legislation with respect to permits, infringements and sanctions so as to achieve centralization and provide the relevant information to national or provincial bodies so requesting;
- (f) provide for the creation of local delegations within their administrative areas to ensure more effective compliance with the provisions of this Act;
- (g) report to the National Institute of Anthropology and Latin American Thought and to the national body responsible for palaeontology on the permits issued and on the infringements and sanctions applied in order to centralize information;
- (h) report to the competent national body on the authorizations granted for the transfer abroad of archaeological collections and objects or palaeontological remains, for publicization and the necessary measures adopted to deal with those cases where their recovery and return to the country must be undertaken.

Article 7 – The State, Provinces and Autonomous Government of the City of Buenos Aires shall also be empowered to adopt policies and measures conducive to uniform nationwide legislation and administrative arrangements which, while taking account of local characteristics, assist maximum effectiveness in protecting and researching the archaeological and palaeontological heritage.

Article 8 – Enforcement powers shall be exercised in accordance with the areas of competence established by this Law and the State may exercise these powers concurrently with the Provinces at their request.

Control of archaeological and palaeontological property

Article 9 – Archaeological and palaeontological property shall be under the public control of the state, provincial or municipal authorities, depending on its location in the country, in accordance with the provisions of Articles 2339 and 2340, Clause 9, of the Civil Code and Article 121 and similar of the National Constitution.

Article 10 – Archaeological and palaeontological materials deriving from excavations carried out under permit or resulting from seizures shall pass into the possession of the state, provincial or municipal authorities, as appropriate, the enforcement bodies being responsible for deciding on the most suitable ends to which they should be put and for determining the space essential for organizing and ensuring their preservation.

The Official Register of Archaeological and Palaeontological Sites

Article 11 – The owners of land on which archaeological or palaeontological sites are situated, as well as any person locating such sites, shall report the latter to the competent body for entry in the corresponding register.

Article 12 – When the competent body enters a new archaeological or palaeontological site in its register, it should notify the owner of the land on which it is situated of this fact, whether such owner be a physical or legal person or a municipality. This entry does not imply any modification to the right of ownership of the property held by the individual or by the state, provincial or municipal authorities.

Article 13 – Any physical or legal person carrying out excavations with a view to undertaking construction, agricultural, industrial or work of a similar nature must declare to the responsible body the discovery of sites and of any archaeological objects or palaeontological remains found during the excavations and shall be responsible for their conservation until such time as the competent body intervenes and takes charge of them.

Article 14 – If the competent body does not order the listing of the site and does not take charge of the finds within ten (10) days of receipt of the declaration, the person or entity in charge of the work shall draw up a memorandum with the involvement of the competent local authority, giving details of the site, and shall hand over the finds made, thereby discharging all responsibility in the matter.

Article 15 – Registered immovable archaeological vestiges and palaeontological remains located on privately owned land shall be subject to permanent observation by the competent body, which may inspect them whenever it deems appropriate, without the owner or person in charge being entitled to oppose a simple inspection.

The Official Register of Archaeological Collections and Objects or Palaeontological Remains

Article 16 – Physical or legal persons who, before the date of promulgation of this Law have in their possession archaeological collections or objects or palaeontological remains, of whatever material and quality, shall within ninety (90) days of the indicated date declare them to the competent authority for entry in the Official Register, the said items then remaining in their possession. On the expiry of the legal time-limit, it shall be presumed that the archaeological or

palaeontological materials came into the possession of the person concerned after the specified date and are therefore illicit in origin and subject to seizure.

Article 17 – The competent body shall make an inventory of the collections, objects and remains declared, sharing the name and domicile of the owner, the place where they are housed and the nature and description of each of the items, together with written and photographic material facilitating their identification.

Article 18 – The archaeological collections or objects and palaeontological remains entered in the Official Register may only be transferred without cost by legacy or donation to scientific institutions or public, national, provincial, municipal or university museums. In every case, a declaration must be made to the competent authority, within the time limit prescribed in Article 16 for the purpose of entering their new location in the relevant register.

Article 19 – The owners of archaeological collections or objects or palaeontological remains entered in the Official Register cannot dispose of them for profit without duly offering them on a priority basis to the national State or provincial authorities, as appropriate. The State shall respond within a period not exceeding ninety (90) days, accepting the proposal or ruling through the competent authority on a fair price for the collection or object for the purpose of its direct purchase. Should the seller object to the indicated price and persist in his intention to sell, he should take the relevant legal action to establish the value of the property or resolve the dispute. If the competent body fails to respond within the period of ninety (90) days or therein evinces a lack of interest in the purchase, the seller may dispose freely of the property, informing the authorities of its new situation for entry in the Official Register.

Article 20 – Any disposal of property effected in breach of the previous article shall be null and void, the competent body being empowered to impose a fine not exceeding 50% of the value of the property upon the seller and the purchaser, who shall bear equal responsibility in this regard, and to seize the archaeological or palaeontological materials pending payment of the fine.

Article 21 – The competent bodies may authorize the temporary holding of archaeological objects or palaeontological remains by researchers or scientific institutions for a specified period with the aim of facilitating research thereon. The authorizing body shall supervise and monitor the loan of materials, whether situated within or outside their administrative area.

Article 22 – Private owners of listed archaeological collections or objects or palaeontological remains shall allow access to the material in the manner agreed with the competent body.

Permits

Article 23 – In order to carry out any kind of survey and research on archaeological or palaeontological sites in the country, a permit must first be obtained from the competent authority within the administrative area where the sites to be studied are situated.

Article 24 – Applications for permits to carry out archaeological or palaeontological surveys and/or research should include the following minimum basic data:

- (a) the name and domicile of the applying person(s) or national or foreign research institute, including express indication of the scientific and non-commercial character thereof;
- (b) a list of the scientific personnel involved, who should be qualified to undertake the scientific tasks to be carried out;

- (c) a list of the support personnel and others taking part in the work, together with personal identification and evidence of a background related to the activity in question;
- (d) a map or topographical sketch precisely delimiting the site or sites where the research is to be conducted;
- (e) a statement of the purposes of the mission, its scientific or cultural scope and the logistical resources or capacities to be employed;
- (f) a work plan together with a description of the methods to be used and any other information enabling the competent authority to make a prior evaluation of its objectives and outcomes;
- (g) the dates, stages or time frames of the mission;
- (h) the subsequent needs to which the scientific research could give rise following the mission.

Researchers who submit work plans certified and approved by official scientific or academic bodies, national or provincial, are dispensed from complying with these requirements.

Article 25 – When application for a permit is made by a foreign scientific researcher or institution, it will further be required as a precondition that the applicant work with an Argentine state or academic scientific institution and obtain the authorization of the Government having regard to his, her or its competence.

Article 26 – Where the research is carried out on privately owned land, the applicant shall append to the permit the written consent of the owner of the land or of the person exercising and possessing the corresponding right, if such consent has been obtained. Failing that, the enforcement body shall, before granting the permit, require the agreement of the persons concerned for carrying out the work entailed by the research.

Article 27 – The competent body shall respond to applications for permits within a period of thirty (30) days. Permits will be issued for a maximum period of three years. Thereafter, application must be made for a new permit. Should the application be rejected by the competent body, the person concerned may appeal to the higher administrative body, whose ruling shall be binding.

Article 28 – Once a permit has been issued to an individual or institution, no other licence will be issued within the designated lot, except where the licensee allows another research activity to take place simultaneously. The enforcement authority shall authorize interdisciplinary and joint research and may make exceptions to the regulations.

Article 29 – The owner of the land, or the person exercising and possessing that right, is entitled to demand of anyone claiming to carry out excavations on the property where movable or immovable archaeological vestiges or palaeontological remains are situated to provide written validation of the permit issued, failing which the excavations will not be allowed to proceed.

Article 30 – All monuments, archaeological objects and palaeontological remains discovered in the course of research are public property of the State, provincial authorities or the Autonomous Government of the City of Buenos Aires, as appropriate. Permit holders may obtain temporary possession of the objects deriving from the research for the purposes of studying them for a period not exceeding two years, in which connection they must identify the site where they are housed.

Article 31 – Permit-holding individuals and institutions must submit all items and materials extracted by them for control and registration by the competent local organization. Similarly, at the conclusion of the research and within a maximum period of one (1) year, they must draw up a documented scientific report detailing the findings of the study and providing a copy of the publications deriving from the research. The enforcement authority responsible for palaeontology may modify the time limits specified in this and the preceding Article in keeping with the specific nature of the material.

Article 32 – The competent authority may designate inspectors to monitor the research and to ensure that the relevant tasks are systematically carried out, the heads of the scientific missions being responsible for supplying them with all the information they require in conformity with this Law.

Article 33 – Any ruling with respect to permits or measures arising therefrom must be soundly based, as must rulings arising from complaints or claims by the owners of the property, which must be resolved within a period not exceeding thirty (30) days.

Article 34 – Failure to comply with the obligations specified in the preceding articles will be sanctioned by the suspension for a maximum period of six (6) months or forfeiture of the permit issued.

Restrictions on private property

Article 35 – When the archaeological or palaeontological remains are located on privately-owned land, the competent authority shall agree with its owners on the necessary steps to be taken to facilitate study and/or preservation of the site.

Article 36 – The competent body may, on grounds of public interest, provide for the temporary occupation of privately-owned land where archaeological property or palaeontological remains are situated. Such occupation, except in cases of imminent danger, must be the subject of a legal declaration. Occupation shall not exceed two (2) years, with the owner of the land receiving fair compensation.

Article 37 – In cases where the conservation of the archaeological vestiges or palaeontological remains entails a perpetual servitude on the lands where the property is situated, the State or provincial authorities in their respective administrative areas must establish this by means of special legislation and compensation of the owners of the land.

Infringements and sanctions

Article 38 – Violations of the provisions of the Act shall incur the following penalties:

- (a) a caution;
- (b) a fine: this shall range from a minimum of 10% to three times the value of the property that is the cause of the conduct sanctioned. The national executive shall make provision when regulating the Law for the payment of a monetary fine in those cases where it is difficult or impossible to assess the value of the property. In determining the fine, due account will be taken of the seriousness of the offence committed and of any repeat offending;
- (c) seizure of the archaeological and palaeontological materials and/or the instruments used to commit the infringements;

- (d) suspension or forfeiture of the permit;
- (e) disqualification;
- (f) temporary or definitive closure.

Article 39 – Persons carrying out or ordering third parties to carry out surveys, transfers or excavation on archaeological and palaeontological sites without requesting the relevant permit from the competent authority shall be liable to a fine, which shall be commensurate with the scale of the offence, and to seizure of all the archaeological or palaeontological items collected, even if they are in the possession of third parties claiming to have acquired them in good faith. If the damage has been such as to cause irreparable loss to the cultural heritage of the State, the competent body shall report the offenders to the judicial authorities with a view to determining whether they be prosecuted for damage (Articles 183 and 184, Clause 5, of the Penal Code).

Article 40 – Persons who, in whatsoever circumstances, accidentally discover archaeological or palaeontological materials on or below ground or in surface water bodies should report them and deliver them immediately to the competent body or, failing that, to the nearest police authority, which should transmit it to the aforementioned body. Failure to report or concealment shall render the offender liable to a caution and, in the case of a repeat offence, a fine. In any case, the materials collected shall be seized.

Article 41 – Persons failing to register archaeological collections or objects and palaeontological remains acquired before the adoption of this Law within the time limits laid down in Article 16 will be subject to a caution and the obligation to enter them in the Official Register within thirty (30) days of notification. Where this obligation is not fulfilled before the expiry of the time limit, the property shall be seized.

Article 42 – Breach of any of the conditions stipulated in the permit shall be punishable by a fine varying according to the seriousness of the offence. When the permit holder fails to respect the agreed methodological and scientific guidelines or pursues objectives other than those prescribed, this may result in forfeiture of the permit without right to any compensation. Should it further be found that the permit holder has infringed this Law and/or the requirements and conditions laid down in the clauses of his/her permit, the offending researcher may also be temporarily or definitively disqualified from obtaining a new licence, and the archaeological and palaeontological materials obtained and the instruments used in the research work may be seized.

Article 43 – Persons who, after the promulgation of this Act, take into their possession and/or trade in archaeological and/or palaeontological objects, and persons receiving such objects, even if they claim to have done so in good faith, shall be liable to a fine and seizure of the property. In the event of sales effected in commercial establishments, the latter will be subject to temporary closure, leading to definitive closure in the case of a repeat offence.

Article 44 – Individuals and public or private institutions that transfer or facilitate the transfer of archaeological or palaeontological materials, for whatever purpose, within the national territory without the prior authorization of the competent local body where these materials are located shall be liable to a fine.

Article 45 – The National Institute of Anthropology and Latin American Thought, the competent national body in the domain of palaeontology, and the competent decision-making bodies in the provinces shall be responsible for applying the sanctions corresponding to the infringements stipulated in this Law

Offences and punishments

Article 46 – Anyone carrying out or instructing third parties to carry out surveys, transfers or excavations on archaeological and palaeontological sites shall be subject to terms of ordinary or rigorous imprisonment ranging from one (1) month to one (1) year, together with a special disqualification of up to three (3) years

Article 47 – If in the course of committing the act described in the preceding Article, damage is done to the objects occasioning an irreparable loss for the national cultural heritage, this will render the person(s) concerned liable to prosecution for damage under Articles 183 and 184 of the Penal Code.

Article 48 – Anyone transporting, storing, buying, selling, industrializing or in any way commercializing pieces, products or subproducts deriving from national and international archaeological and palaeontological sites shall be punished by two (2) months' to two (2) years' imprisonment together with special disqualification for up to five (5) years.

Article 49 – Any attempt to export and import archaeological or palaeontological pieces, products and subproducts and archaeological or palaeontological collections shall be subject to the penalties prescribed for the crime of smuggling under Articles 863 and similar of the Customs Code.

Transfer of archaeological and palaeontological objects

Article 50 – Archaeological objects and palaeontological remains may be transferred within the national territory, subject to prior authorization by the competent local body, by way of a loan and for the purposes of research and or display for such time as the competent authority shall determine.

Those concerned shall notify the measures to be adopted for the safeguarding of the said property and shall guarantee its return to its place of origin in the condition in which it was delivered.

Article 51 – Archaeological and palaeontological property may be transferred abroad under the conditions laid down in the previous Article, subject to prior authorization by the competent local body, as a loan for research purposes or publicization abroad.

Special protection of palaeontological-type materials

Article 52 – The palaeontological objects or remains defined in Article 2 of this Law constituting representative materials cannot be transferred abroad for the purposes of interchange, exchange or donation.

Article 53 – Reproductions and replicas of archaeological and palaeontological property may be sold and exchanged.

Article 54 – The resources of the competent national bodies shall consist of the following:

- (a) budgetary allocations;
- (b) products, interests and income deriving from its assets;
- (c) inheritances, legacies and individual donations;
- (d) duties and fees received in return for services provided;

- (e) subsidies or subventions;
- (f) sponsorship by private enterprise, state entities and non-governmental organizations;
- (g) income from fines for failure to comply with the provisions laid down in the various protective laws;
- (h) any other income available to the Executive Power.

Supplementary provisions

Article 55 – The enforcement body for palaeontology shall be located in the Secretariat for Science and Technology.

Article 56 – National universities and scientific entities with a proven record in archaeological and palaeontological research shall agree with the authority responsible for enforcing this Law ways and means of protecting and making known the archaeological and palaeontological heritage. Such agreements shall provide for the participation of national universities and entities in the evaluation and administration of permits, the designation of inspectors, and heritage design, preservation and monitoring.

Article 57 – All the time limits specified in this Law shall be calculated in working days. This Law shall be regulated by the national executive within a period not exceeding one hundred and twenty (120) days.

Article 58 – Law No. 9080, its legal regulations and any other provision in conflict with the present Act are hereby revoked.

Article 59 – This Law shall be transmitted to the executive authority.

DONE IN THE SALA DE SESIONES OF THE ARGENTINE CONGRESS, IN BUENOS AIRES,
ON THE FOURTH DAY OF JUNE 2003

REGISTERED UNDER No. 25.743

EDUARDO O. CAMAÑO. JOSÉ L. GIOJA. Eduardo D. Rollano. Juan Estrada.

Decree 261/2003

Buenos Aires, 25/6/2003

THEREFORE: It shall be considered Law of the Nation No. 25.743, complied with, communicated, published, transmitted to the National Directorate of the Official Register and archived.

KIRCHNER. Alberto A. Fernández. Daniel F. Filmus.