

Republic of Colombia  
**COLOMBIAN INSTITUTE OF ARCHEOLOGY AND HISTORY - ICANH**

**DECREE 833                      26/ 04/ 2002**

Partially regulating Law 397 of 1997 pertaining to the National Archeological Heritage and to other provisions which are promulgated.

The President of the Republic of Colombia, exercising his constitutional and legal power, especially those conferred by article 189, numeral 11, of the Political Constitution and Law 397 of 1997, and

**WHEREAS:**

According to articles 63 and 72 of the Political Constitution the archeological heritage belongs to the Nation and, consequently, it is free of liens, inalienable and does not expire;

As foreseen by article 8° of the Political Constitution and article 1°, numeral 5, Law 397 of 1997, it is the State and people's duty to protect the cultural and natural wealth of the Nation;

As an element of national identity, the archeological heritage deserves the primary protection by the State, for its conservation, care, rehabilitation and dissemination and in order to avoid its high degree of vulnerability, especially considering that the Colombian territory entails a potential space of archeological wealth;

The Nation's archeological heritage constitutes a structural conjunction of scientific information, associated to movable assets and real estate which have been defined as archeological, according to their origin or time of creation by international treaties approved by the country and by internal provisions of legal character;

The separation or arbitrary removal of these assets from their original archeological context represents a form of affectation or loss of the archeological information and, consequently, a significant deterioration of the aforementioned structural conjunction;

Destruction, devastation and looting of places of archeological wealth, extraction, commerce and transfer at any title of the assets encompassing the archeological heritage which are outside commerce, constitute modalities of deterioration of the structural conjunction of the scientific information associated with material assets and, therefore, represent actions internationally recognized as generators of an irreparable impoverishment of the cultural heritage of nations.

The Colombian State is signatory to different treaties and multilateral agreements aimed at the common development of cooperative actions for the defense of the cultural and archeological heritage, and for its recovery or devolution facing situations of illegal subtraction, commerce and exportation of the assets that constitute it; assets belonging to the archeological heritage are considered of cultural interest, thus, they may be subject to regimes, mechanisms and modalities of protection and incentives consecrated in the said law;

Valid criminal and police regulations consecrate several sanctions applicable to cases of damage, destruction, alienation and other prohibited actions against the cultural heritage, archeological heritage and, in general, over public assets,

## DECREES: CHAPTER I

### General Provisions

Article 1°. *Terminology used.* For the purpose of this decree, it is understood by:

1. **Archeological Context.** Structural conjunction of archeological information associated to movable assets or real estate of archeological character.
2. **Archeological Information.** Data and elements of immaterial, scientific and historic character about the origin, values, traditions, costumes and habits that render movable assets and real estate of archeological character of no commercial value and filled of cultural sense.
3. **Movable assets and real estate of archeological character.** Material assets consider as archeological in virtue of their origin and time of creation, according to international treaties approved by the country and to the national legislation.
4. **Concept of belonging to the archeological heritage.** Technical and scientific concept issued by the Colombian Institute of Archeology and History to the required effects, by way of which it is technically and scientifically established that a certain asset or set of assets are of archeological character.
5. **Deterioration of the archeological context due to improper intervention.** Any human action not authorized by an authority with jurisdiction with the scientific, cultural and other objects provided by the Law, action which produces irreparable affectation or loss of archeological information. Among others, the following are constitutive of this deterioration: exploration, excavation, extraction, handling, transportation from the archeological context not previously authorized, or the ignorance of special archeological handling plans.
6. **Archeological Exploration.** Search, prospection, research or similar actions of archeological character dully authorized in the national territory by the Colombian Institute of Archeology and History or by bodies appointed by the said institute.
7. **Excavation of archeological character.** Movement or removal of soil with archeological purposes, dully authorized in the national territory by the Colombian Institute of Archeology and History, or by bodies appointed by the said institute.
8. **Material Intervention of areas of archeological influence.** Any action capable of affecting the existing archeological context in an area of archeological influence.
9. **Area of archeological Influence.** Precisely determined area of the national territory, including publicly or privately owned lands, where there are movable assets or real estate which are part of the archeological heritage, zone which should be declared as such by an

authority with jurisdiction for the purpose of establishing therein a special archeological management plan to guarantee the integrity of the archeological context.

**10. Archeological management plan.** Technical concept of mandatory compliance issued or approved by an authority with jurisdiction regarding specific archeological contexts, movable assets and real estate which are part of the said heritage or areas of archeological influence, by way of which they are officially established, or they are established by request of their holders, the permissible levels of intervention, management conditions and dissemination plans.

**11. Authorized professionals in archeological matters.** Professionals, experienced, with knowledge or specialized in the archeological field, approved by the Colombian Institute of Archeology and History in archeological exploration or excavation events, or by the Ministry of Culture or the authority it may delegate for the carrying out of actions of intervention over this heritage.

**Article 2°. *Authorities with jurisdiction.*** To all effects covered by this decree, Authorities with jurisdiction are:

1. The Ministry of Culture regarding the functions assigned by Law 397 of 1997 which may be delegated in the terms therein.

2. The Colombian Institute of Archeology and History regarding the functions directly assigned to it by Laws 163 of 1959 and 397 of 1997, Decrees 264 of 1994, 2667 of 1999, particularly those to authorize archeological explorations or excavations, to carry out the registry of assets part of the archeological heritage, to declare of archeological character movable assets and real estate representative of the cultural tradition and identity of currently existing indigenous communities and to declare about assets of the archeological heritage, those attributed by this decree and those which may be delegated by the Ministry of Culture according to provisions in according to provisions in Law 397 of 1997.

3. Regional authorities, or authorities of ethnic groups, technical, cultural or university entities delegated by the Ministry of Culture or by the Colombian Institute of Archeology and History, in the later case only regarding the functions directly attributed to the said institute by valid regulations.

**Paragraph.** In all cases in which “authority with jurisdiction” is used in this decree, it shall be understood as referred to the Ministry of Culture or the entity it may delegate. Criminal, police and customs investigation and sanction authorities shall exercise the powers conferred to them by the law and legal acts.

**Article 3°. *Integration of the archeological heritage.*** Movable assets and real estate of archeological character, archeological information and/ or archeological context in general, integrate the archeological heritage, which belongs to the Nation, it is free of liens, inalienable and does not expire.

According to article 4° of Law 397 of 1997, assets integrating the archeological heritage are cultural interest assets which are part of the Nation’s cultural heritage. Due to their condition of cultural interest assets, besides the constitutional provisions pertaining to their property, it is free of liens, inalienable and does not expire. They are object of the

protection and incentives regime provided in the aforementioned law or in the regulations which modify it.

Anyone who for any cause or title is in possession of assets from the archeological heritage has the civil condition of holder. Holding of these assets may be voluntarily maintained in whoever may be in it, or it may be authorized according to provisions in this decree.

Rights of ethnic groups over the archeological heritage which may be part of their cultural identity and which is territories over which they may be settled, shall not constitute an exception to the constitutional provision over their nature of being free of liens, inalienable and not expiring.

Article 4°. *Technical and scientific concepts of assets belonging to the archeological heritage.* Movable assets and real estate of archeological nature shall not require any type of public or private declaration to be considered as part of the archeological heritage. The concept of certain asset or set of assets belonging to the archeological heritage shall not have a declarative character but rather it shall have a technical and scientific recognition for certain effects provided by valid regulations.

No preventive, protection, promotion, preservation or prohibitory or penalizing situation provided by the Political Constitution, the Law or regulations of any nature pertaining to assets that integrate the archeological heritage, require the existence of a previous concept of belonging subject to the situation in question regarding being part of said heritage.

In no case shall the inexistence of a declaration of an archeological influence zone or the inexistence of an archeological management plan, empower the implementation of any type of exploration or excavation without the previous authorization of the Colombian Institute of Archeology and History.

For the purpose of this decree, the national territory shall be considered as an area of potential wealth in archeological heritage. Without prejudice thereof, areas of archeological influence should be previously declared by an authority with jurisdiction.

Article 5°. *Objectives of state policy regarding archeological heritage.* State policy regarding the archeological heritage, shall have as primary objectives the protection, preservation, rehabilitation, dissemination and recovery of such heritage for it to serve as a testimony of the national cultural identity both in the present times as well as in the future.

Article 6°. *Assets belonging to the colonial age.* Movable assets and real estate belonging to the colonial period which had been or which are declared, subsequent to the validity of this decree, as national monuments or as assets of cultural interest, shall be subject to the provisions in article 11 of Law 397 of 1997.

## CHAPTER II Management of assets integrating the archeological heritage

### TITLE I FINDINGS OF ASSETS INTEGRATING THE ARCHEOLOGICAL HERITAGE

Article 7°. *Findings of assets integrating the archeological heritage.* Findings of assets integrating the archeological heritage shall not have for any purpose, the civil character of invention, finding or discovery of treasures.

Article 8°. *Information on fortuitous findings of assets integrating the archeological heritage.* According to article 6°, Clause 3, of Law 397 of 1997, whomever may find, in a fortuitous way, assets which are part of the archeological heritage should give immediate notice to the closest civil or police authorities, who are obliged to report the event to the Ministry of Culture within the twenty four (24) hours following the reception of the notice.

Once the information has been received by the Ministry of Culture, it shall be immediately transferred to the Colombian Institute of Archeology and History pursuant to carrying out the technical studies, proceedings and to make the decision on the applicable measures according to the stipulations in this decree. Technical studies may be carried out directly by the said institute or at its request, by local authorities, institutions or specialized individuals.

The notice referred to by the first clause of this article may be given directly by the person finding the assets, to the Colombian Institute of Archeology and History, if possible.

Activities originating the fortuitous finding of assets integrating the archeological heritage shall be immediately suspended and, should it be necessary, public forces may be called in.

Article 9°. *Placing assets from the archeological heritage at the Colombian Institute of Archeology and History's disposal.* Whomever may find assets from the archeological heritage and kept them in holding shall immediately place them at the Colombian Institute of Archeology and History's disposal for their registration.

Once registered, the Colombian Institute of Archeology and History shall decide on the grounds of the assets characteristics, and based on the existence of archeological elements that such assets may have, whether it leaves them in voluntary holding of the person who fortuitously found them or if it keeps them directly or through specialized institutions.

### TITLE II AUTHORIZATION FOR EXCAVATIONS, EXPLORATIONS and ARCHEOLOGICAL INTERVENTION ACTS

Article 10. *Exploration, excavation of archeological character.* No actions of exploration or excavation pertaining assets from the archeological heritage may be carried out in the national territory, including privately owned lands, without the previous authorization of the

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Colombian Institute of Archeology and History. Every action of exploration, excavation or intervention of assets from the archeological heritage located in areas in which indigenous communities are settled may be carried out previous consultation with the respective indigenous community and authorization from an authority with jurisdiction. Consultation and coordination referred to by this article, shall be carried out according to the procedures provided in the valid regulations or in those modifying them regarding consultation with indigenous communities.

Article 11. *Object of the exploration or excavation of archeological character.* Exploration or excavation of archeological character shall be authorized if it were deemed appropriate, with cultural and scientific investigation purposes, for the preservation of the archeological context or with other purposes provided in the valid regulations. Exploration or excavation covered by this article should be carried out by authorized archeological professionals.

The Colombian Institute of Archeology and History shall regulate by means of a general contents act the requirements to be demonstrated for the authorization of these activities, as well as the forms of intervention allowed and the information to be submitted.

Article 12. *Finding of assets from the archeological heritage during exploration or excavation activities of archeological character.* Upon finding assets from the archeological heritage during exploration or excavation activities of archeological character provisions in articles 80 and 9° of this decree shall be enforced, nevertheless, the exploration or excavation activity of archeological character may be continued, previous authorization by the Colombian Institute of Archeology and History.

Article 13. *Authorization of material intervention on archeological zones of influence.* Every act of material intervention over archeological zones of influence should be previously authorized by an authority with jurisdiction, under the supervision of archeological professionals.

### TITLE III

#### REGISTRY OF ASSETS FROM THE ARCHEOLOGICAL HERITAGE

Article 14. *Registry of assets from the archeological heritage.* It shall be within the Colombian Institute of Archeology and History's jurisdiction to carry out a registry of assets from the archeological heritage, which shall have inventory, catalogue and cultural information purposes. The registry of assets from the archeological heritage shall be maintained updated and it shall be integrated to the National Registry of Cultural Heritage managed by the Ministry of Culture.

The Colombian Institute of Archeology and History shall regulate according to the National Registry of Cultural heritage, the form, requirements, elements, information and other attributes necessary to maintain an appropriate registry.

The Colombian Institute of Archeology and History shall make the registry covered by this article officially, or at the request of holders of assets from the archeological heritage.

In no case shall the registry of assets from the archeological heritage, whose holding shall be maintained in whoever may have accessed it, confer rights of prohibited exercise over

the respective assets, according to provisions of the Political Constitution, valid regulations and this decree.

Article 15. *Maximum term for the registry of assets from the archeological heritage.* A maximum term of one (1) year from the validity of this decree is established for those who may have, by any cause, come into possession of assets from the archeological heritage to register them at the Colombian Institute of Archeology and History.

Through this registration, the holder of assets from the archeological heritage may continue in voluntary holding of the said assets. Furthermore, holders of assets from the archeological heritage whose registration had been made before the validity of this decree may continue in voluntary holding of the said assets.

Article 16. *Registration of voluntary holding assets.* In all acts of registration of assets from the archeological heritage, whose holding is maintained in whoever may have come into it, attestation shall be left of the said voluntary holding by the holder, of the prohibitions regime and constitutional and legally established protection, regarding the impossibility of carrying out acts of material intervention without previous authorization of an authority with jurisdiction, of the commitment of the holder of responding for the preservation, care and safeguard of the asset in question on his/her exclusive expense, as well as the remaining information elements the Colombian Institute of Archeology and History may deem necessary.

Voluntary holding of assets from the archeological heritage granted as of the expiration of the term provided in article 15 of this decree shall cease at the request by authority with jurisdiction, through the written requirement of returning the respective asset to its authorized voluntary holder.

### CHAPTER III Final Provisions

Article 17. *Acts over assets from the archeological heritage.* Assets from the archeological heritage are out of the commerce and are nontransferable under any title by their holders. Their holder shall not be able to export them or take them out of the country without previous authorization from an authority with jurisdiction.

Article 18. *Offences against assets from the archeological heritage.* Without prejudice of the obligation of arraigning of public officers aware of infractions against the existing legislation, the Colombian Institute of Archeology and History shall file the criminal or police claims for the commission of crimes or police infractions of which it may become aware.

Article 19. *Material seizure of assets from the archeological heritage.* Seizure of assets from the archeological heritage consists in the act by which such assets shall be in holding of the Nation, upon the occurrence of any of the following events:

1. When the assets in question are not registered, once the term provided by article 17 of this decree has expired.
2. When any act of alienation prohibited by the Political Constitution had been made over the respective asset.

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3. When there had been attempts for the exportation of the respective asset without permission by an authority with jurisdiction or against the exportation regime.

4. When the respective asset has been obtained through any type of exploration or excavation not authorized by the Colombian Institute of Archeology and History.

5. When the respective asset is subject of recovery upon its illegal exportation or subtraction.

6. When the requirement made by an authority with jurisdiction for its voluntary devolution to the Nation were not attended, having its holding been authorized from the term provided in article 15 of this decree in virtue of fortuitous finding of these types of assets, their finding within archeological explorations or excavations or finding of the assets in the development of archeological impact studies.

Paragraph. Seizure shall not constitute a form of reacquiring assets in the hands of private citizens.

Article 20. *Definitive seizure of assets from the archeological heritage.* The Ministry of Culture or the authority it may delegate, with the required assistance of police authorities, as well as customs authorities in as far that may be within their jurisdiction shall execute the material seizure in the cases determined in the previous article.

The Ministry of Culture is vested of police powers, according to paragraph 2° of article 15 of Law 397 of 1997.

In all cases, once the material seizure has taken place, the Ministry of Culture or the authority it may delegate shall start an administrative act according to the Part One and others as appropriate of the Common Administrative Code, for the purpose of deciding through a motivated administrative act the definitive seizure of the assets in question or the admissibility of maintaining the voluntary material holding of the asset in question in whoever for some reason may have entered into holding, in case during the administrative act the inexistence of the corresponding cause which originated the material seizure were proven.

In the same administrative act, it shall be decided on the imposition of pecuniary sanctions provided in article 15, numerals 2 to 4, de Law 397 of 1997.

Article 21. *Delegations.* Delegations which according to provisions in article 15, paragraph 1°, of Law 397 of 1997, had been made by the Ministry of Culture before the validity of this decree, shall remain valid until their modification or termination are decided, according to the legal regulations on the matter.

Article 22. *Reproductions of assets from the archeological heritage.* As of six (6) months after the validity of this decree, every reproduction or imitation of assets from the archeological heritage to be commercialized or exported, may contain a bas-relief seal in and in a visible place, made during its production stage in which the word "REPRODUCTION" may be read, by way of which it shall be verified, for the purpose of



avoiding unnecessary interferences, that the respective elements are not part of the archeological heritage.

In case of doubt by purchasers or national authorities, the concept of the Colombian Institute of Archeology and History shall be requested. The Ministry of Culture and the Colombian Institute of Archeology and History shall promote before the Superintendence of Industry and Commerce the application of the provisions in this article.

Article 23. *Application of legal provisions.* Legal provisions in this decree are regulatory and complementary to Law 397 of 1997. What is not regulated by this decree shall be followed according to the said law and other valid legal provisions.

Article 24. Modify numeral 7 of article 2° of Decree 3048 of 1997, modified by Decree 1479 of 1999, which shall be as follows:

“7. The General Director of the Colombian Institute of Archeology and History”.

Article 25. *Validity and derogation provisions.* This decree shall be in full force from its publication in the **Official Journal**, modifies as appropriate article 2° of Decree 3048 of 1997, modified by Decree 1479 of 1999, and derogates provisions which may be in opposition, as well as these particularly listed herein: Decree 904 of 1941, except articles 1° and 2°; Decree 264 of 1963, except articles 1°, 2°, 4°, 5°, 9°, 16; Decree 1397 of 1989, except articles 1° and 7°.

Publish and enforce.

Issued in Bogotá, D. C., on the 26<sup>th</sup> April 2002.

**ANDRES PASTRANA ARANGO**

**The Minister of Culture, Araceli Morales López.**