

## The La Valletta Convention and Preventive Archaeology: The Croatian Perspective

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### **Abstract**

*European Convention on the Protection of the Archaeological Heritage (Revised), adopted by the Council of Europe in 1992, had a significant influence on the practice of archaeology in Europe. The attitude expressed in the Convention considers prevention as a prerequisite for the preservation of archaeological heritage which can be conducted through the active participation of experts in the early stages of planning procedures. After the ratification in 2004, the Convention became an important factor in the development of archaeological practice as a direct participant in the planning of spatial and infrastructural development in Croatia. Although the changes were significant, they did not include the full range of requirements needed for the successful practice of preventive archaeology. As Croatian archaeology is still not turning in that direction, this paper is focused on consideration of factors which can fulfill the requirements for implementation of efficient preventive archaeology, but also the ones which are currently preventing Croatian archaeology from changing attitude towards sustainable archaeological heritage management.*

**Keywords:** *Valletta Convention, Croatian heritage legislation, preventive archaeology, rescue archaeology, in situ preservation*

### **Sažetak**

*Europska konvencija o zaštiti arheološke baštine (revidirana), koju je Vijeće Europe usvojilo 1992. godine, imala je značajan utjecaj na europsku arheološku praksu. Prema stavu iskazanom u Konvenciji prevencija je preduvjet očuvanju arheološke baštine, a provodi se aktivnim sudjelovanjem stručnjaka u ranim fazama razvoja prostornih planova. U Hrvatskoj je Konvencija nakon ratifikacije 2004. godine postala značajan čimbenik razvoja arheološke prakse kao direktnog sudionika u planiranju prostornog i infrastrukturnog razvoja. Iako značajne, promjene nisu obuhvatile sve zahtjeve potrebne za provedbu uspješne preventivne prakse. Kako se hrvatska arheologija još uvijek ne kreće u tom smjeru, ovaj je rad usmjeren na razmatranje čimbenika koji mogu ispuniti zahtjeve za provedbu učinkovite preventivne arheologije, kao i onih koji trenutno sprečavaju preusmjerenje hrvatske arheologije prema održivom upravljanju arheološkom baštinom.*

## Introduction

The revised version of the European Convention on the Protection of the Archaeological Heritage, adopted by the Council of Europe in 1992, had a significant influence on changing the public, but also professional attitude towards archaeological remains. Most of the authors who considered these changes agree that ratification of the Convention and its implementation in legislation brought about drastic changes in the practice of archaeology in many countries. The attitude expressed in the Convention considers prevention a prerequisite for the preservation of archaeological heritage and, rather than through rescue archaeological excavations, acts through active participation in the early stages of planning procedures. This process requires a developed set of tools which enable informed decision-making on the treatment of archaeological remains. The development of this new approach introduced various novelties in archaeological practice by which archaeology was no more a mere academic discipline and became a part of the planning process of social and economic development (Kristiansen 1989: 28-29; Carman 1996: 3-6; Groenewoudt, Bloemers 1997, 121; van Marrewijk, Brandt 1997, 74; Willems 2007, 57-58; 2009).

Croatian ratification of the Convention in 2004 had a significant influence on the practice of archaeology in Croatia.<sup>1</sup> Although some of the required procedures were already regulated through national legislation, with the ratification of the Convention archaeology truly became an active participant in spatial and infrastructural development. In the following years, most of the field work started taking place in the context of contractual obligations and the share of public funding in annual costs of archaeological activities is now substantially reduced. At the same time, the performance of archaeological field work was partly commercialized and the number of employed archaeologists has increased significantly.

But, although the changes covered a great deal of archaeological practice, they did not include the full range of requirements needed for the successful practice of preventive archaeology. This is especially noticeable when field work has to be conducted prior to any activities that lead to disturbance of the archaeological record. Then it becomes observable that decisions about archaeological heritage are made only with the emergence of a direct threat, i.e. in the late or final phases of development projects, and therefore without the possibility of proper utilization of mitigation strategies. In that situation *in situ* preservation is not and cannot be the primary option, and procedures, instead of being preventive, are conducted in the manner of rescue archaeology.

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1 Croatia signed the Convention in 2001 and after its ratification in 2004 it entered into force in 2005 (Narodne novine – međunarodni ugovori 4/2004).

Prevention, on the other hand, is a desirable way of dealing with archaeological heritage and represents a treatment which can be provided only through high-quality and on-time evaluation. As Croatian archaeology is still not turning in that direction, the intention of this discussion is the consideration of factors which can fulfill the requirements for implementation of efficient preventive archaeology, but also the ones which are currently preventing Croatian archaeology in changing attitude towards sustainable heritage management.

### Meaning and significance of preventive archaeology

The fate of archaeological remains no longer depends exclusively on the will and interests of archaeologists. Today, archaeology is a part of a wider debate between several interest groups and archaeologists now represent only one segment of potential interests, usually the one which is in conflict with political and economic interests designed in the form of development plans and economic progress. For this reason, any statement about the value ultimately becomes the justification of financial costs within the public or private development projects (Young 1994: 198; Grenville, Ritchie 2005: 213).

As a part of the same process, the concept of care and protection of archaeological monuments is replaced with an approach directed towards the management of archaeological heritage where the main focus is placed on the issue of long-term sustainability and thereby the issue of *in situ* preservation of archaeological heritage. This attitude requires the inclusion of archaeology in the early stages of planning procedures, which enables prevention rather than rescue archaeological excavations. The justification of this attitude can be found in its focus on future generations which arose from major infrastructural projects, conducted especially in the 1980s in west European countries (O'Keefe 1993: 406; Trotzig 1993: 414; Willems 2007: 59). These brought to light, but at the same time destroyed a significant amount of archaeological remains. As this situation is usually followed by the lack of published research, the problem became even more acute.<sup>2</sup> In accordance with the idea that archaeological remains are limited in quantity and size, experts started emphasizing the destructive character of archaeological excavations and began to develop the ideas of prevention and preservation (Carman 1996: 3-5; 2000: 5-6).

As, of course, preserving everything is not possible, this problem leads to the development of procedures for selection of archaeological remains which contain

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<sup>2</sup> After more than a decade of major development projects followed by archaeological field work, this became the situation with which Croatian archaeology can very much relate to.

sufficient value to be legally protected for long-term preservation. This, now the most important factor in creating a representative inventory of archaeological remains, required the development of appropriate selection strategies based on clear evaluation system which includes the analysis of scientifically and socially relevant values (Darvill 1987: 169; 2001: 192). The ultimate goal is to enable the creation of value assessments and value statements that define the most valuable part of the archaeological record, the part which is worth preserving.<sup>3</sup> After the procedure is completed, the selected material can be included in the management process which should ensure its protection and long-term preservation, sustainability of its value and its intact transmission through time. This approach gives heritage appropriate treatment and complies with the Convention's requirements for archaeological practice directed towards prevention and *in situ* preservation of archaeological heritage.

### Croatian heritage legislation and the La Valletta Convention

The system of heritage management includes laws, regulations and guidelines related to the procedures for identification, evaluation, inventory, protection and conservation (McManamon, Hatton 2000: 6), so preventive approach to archaeological remains can be properly defined and adequately employed only within a meaningful legal framework. As legislation is concerned with all aspects of heritage management, from conventional research methods, through the methods of presentation, interpretation, preservation and rejection, to the very rights of access and active inclusion (Soderland 2010: 130), considerations of a legal framework represent a prerequisite for understanding the characteristics of heritage management process on a national level.

Protection and preservation of cultural heritage in Croatia is under the jurisdiction of the Directorate for the Protection of Cultural Heritage of the Ministry of Culture (*Uprava za zaštitu kulturne baštine Ministarstva kulture*) and its 22 regional units. Archaeology is conducted in accordance with the Act on the Protection and Preservation of Cultural Objects adopted in 1999 (*Zakon o zaštiti i očuvanju kulturnih dobara*; Narodne novine 69/1999, 151/2003, 157/2003, 87/2009, 88/2010, 61/2011, 25/2012, 136/2012, 157/2013, 152/2014, 98/2015). Besides the

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3 On the other hand, uncritical implementation of the ideas expressed in the Convention is causing significant resistance and criticism which demands re-evaluation of the adopted paradigms (Groenewoudt, Bloemers 1997: 139; Carman 2000: 13; Burström, Elfström, Johansen 2004: 136; Tainter, Bagley 2005: 58; Willems 2009: 97; 2010: 218-219). However, new theoretical approaches are not yet developed and preventive archaeology based on policy of *in situ* preservation still represents an optimal management system for archaeological heritage.

Act, archaeological activities are governed by the Ordinance on Archaeological Research (*Pravilnik o arheološkim istraživanjima*) which was first enacted in 2005 (Narodne novine 30/2005)<sup>4</sup> and then again, with minor modifications, in 2010 (Narodne novine 102/2010). The Ordinance defines archaeological activities, licensing requirements and the conditions for conducting archaeological research.

The currently valid law is based on the Act on the Protection of Cultural Monuments from 1965 (*Zakon o zaštiti spomenika kulture*; Narodne novine 32/1965, 55/1965, 50/1966, 7/1967, 13/1967, 31/1986, 47/1986, 47/1989, 19/1991, 26/1993, 52/1994), which was the basic cultural heritage protection act in the Socialist Republic of Croatia, but also valid in the years after the dissolution of Yugoslavia.<sup>5</sup> The old Act prescribed the obligation to report any accidental discovery of archaeological finds, the procedure for registration of cultural monuments and regulations for archaeological activities, procedures for supervision of such works as well as the fines for non-compliance with law provisions. In addition, it included obligation for developers to finance archaeological activities through development schemes budget when works were planned on registered archaeological sites and required the cooperation between regional departments for the protection of cultural monuments and the authorities responsible for spatial and urban planning.

Similar obligations are imposed by the currently valid law under which all goods which are presumed to have the capacity of a cultural object and which are located or found in soil, sea or water are the property of the Republic of Croatia and are considered a national treasure. Like the previous law, it includes the obligation to report archaeological finds and sets conditions for archaeological works and their supervision, as is envisaged by the La Valletta Convention. In addition, the 'polluter' or 'developer pays' principle is extended to all work performed on the surface or below the surface, in soil, water or sea, if archaeological finds are discovered. The law defines the procedures of cultural heritage registration in the Cultural Objects Register of the Republic of Croatia, which consists of three lists: the List of protected cultural objects, the List of cultural objects of national importance and the List of objects subject to preventive protection. It also demands recording of immovable cultural heritage in the cadastre and land register, and regulates their relationship with spatial planning documents.

Brief overview of the last two cultural heritage laws provides an insight through which it becomes evident that Croatia has a long tradition of integrated protection which is reflected in fifty years of legally demanded participation of cultural heritage

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4 Before the enactment of the first Ordinance on Archaeological Research, a special ordinance had only regulated underwater archaeological activity (Narodne novine 94/1998).

5 Review of the development of legislation see in Antolović (2009) and Deranja Crnokić (2014).

experts in the development of urban and regional spatial plans. This topic was already under consideration through the analysis of professional documents created in Yugoslavia between 1960 and 1980 (Rukavina, et al. 2013).<sup>6</sup> The authors of this paper concluded that in the period in question the reflection on the principles of integral protection was well developed in Croatia. Although considerations presented in these documents were not fully incorporated in legislation, they are an important indicator of compliance with the trends that were taking place at the international level at the same time. However, after the dissolution of Yugoslavia and the change of political system, the subject was not discussed in professional documents at the national level (Rukavina, et al. 2013: 320–321). In the long run, this has certainly prevented closer cooperation between the sectors of spatial planning and heritage protection, but it can be presumed that it also prevented the development of considerations on preventive archaeology as reorientation of interests towards the long-term and sustainable preservation of archaeological heritage.

In this context, it is also important to note that the phrase preventive archaeology is not mentioned in Croatian legal documents, but also that the concept is not present in the Croatian translation of the La Valletta Convention. The cause of this situation is a translation of the Convention from English text, which is not fully identical to the French version. Willem Willems has already warned about this problem in 2007, noting that while in the Article 6 the French version of the Convention (Council of Europe 1992a) speaks about *l'archéologie préventive*, the English version (Council of Europe 1992b) uses the phrase 'rescue archaeology' which is, as Willems rightly points out, exactly what the Convention seeks to prevent (Willems 2007: 64). Unfortunately, this important issue is often overlooked when the relationship between the La Valletta Convention and preventive archaeology is considered, especially because this alone can disable the construction of proper legal foundations and their implementation in practice.

In Croatian text of the Convention 'rescue archaeology' is translated as *zaštitno arheološko iskopavanje i istraživanje*, which literally means protective archaeological excavation and research. The phrase 'rescue archaeology' (*spasilačka arheologija*) has not yet entered the Croatian archaeological terminology, and in this context, the clumsy and unsuitable term 'protection' (*zaštita*) is generally used. As terminology necessarily reflects the understanding of certain issues within the discipline, this phrase essentially implies that in Croatia archaeological excavations are still primarily perceived as a form of protection of archaeological remains. However, the basic ideas of preventive archaeology are indicated in Article 5 of the Act on the Protection and Preservation

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6 The analysed documents are not dealing with the specific issue of archaeological heritage protection, but with the protection of cultural heritage in general (Rukavina, et al. 2013: 320).

of Cultural Objects (Narodne novine 69/1999; 136/2012), which among other things says that the purpose of cultural heritage protection is its preservation in an unaltered and original condition, as well as prevention of any actions that could alter its characteristics, form, significance, and appearance, thus jeopardizing its value. Therefore it is possible to argue that the basic legal framework for implementation of preventive archaeology exists, but it seems that in practice the provisions of Article 5 are the least related to archaeological heritage. As prevention today represents the preferred method of dealing with archaeological heritage, with its primary goal directed towards avoiding unnecessary destruction, upgrade of legal provisions requires a clear redirection of emphasis to *in situ* preservation and the development of evaluation system which can support its implementation.

### Final remarks

In the context of preventive archaeology, the process of systematic evaluation provides a clear insight into the reasons for protection of archaeological heritage. The evaluation in this context is understood as a procedure of creating a statement about the value of archaeological remains which promotes the understanding of their attributes as the main precondition for decisions about their management. In the background of this procedure is the basic premise of *in situ* preservation created from the recognition that archaeological remains are under constant threat and that we cannot preserve all of them but that we have to, at one point, start choosing those which should not be subjected to excavation. So, the main objective of the evaluation becomes defining the remains that are worth preserving and the establishment of the appropriate treatment procedures for those that do not meet the set requirements. Consequently, this area of archaeological activity gains central importance and becomes formulated by the terms of conscience and responsibility of the discipline and needs to be implemented in every practice which tends to be preventive.

Of course, this is not possible without state and legislative support that will take the responsibility of registration and documentation, protection and conservation, but also the obligation of setting a quality control system based on predefined standards. Unfortunately, in Croatia, no formal or legal provisions have been made for this goal to be achieved. There is also a lack of activities in everyday heritage practice which would lead to the application of this kind of basic provisions derived from the La Valletta Convention. On the other hand, changes in this type of procedures are not possible without the support of a wider scientific community which still has the most influence on disciplinary structure and practice of archaeology in Croatia. Thereby it has the ability to change our understanding of prevention in archaeology and the

ability to enable successful implementation of requirements which are put in front of the national legislation by the La Valletta Convention. These include legal obligations that provide possibilities for active participation in the early stages of planning procedures, redirection of priorities towards *in situ* preservation and with that to non-invasive methods as preferred methods of archaeological research and desirable way of approaching the archaeological remains. This, of course, must be followed by the development of practical knowledge and skills of employees in the field of archaeological heritage management which will enable them to make informed and timely decisions on the treatment of archaeological remains.

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