

CROATIAN PARLIAMENT

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Pursuant to Article 88 of the Constitution of the Republic of Croatia, I hereby issue the

DECISION

PROMULGTING THE ACT ON AMENDMENTS TO THE ACT ON THE PROTECTION AND PRESERVATION OF CULTURAL OBJECTS

I hereby promulgate the Act on Amendments to the Act on the Protection and Preservation of Cultural Objects, adopted by the Croatian Parliament at its session on 10 September 2003.

No. 01-081-03-3103/2

Zagreb, 15 September 2003

President
of the Republic of Croatia
Stjepan Mesić, m. p.

ACT

ON AMENDMENTS TO THE ACT ON THE PROTECTION AND PRESERVATION OF CULTURAL OBJECTS

Article 1

In the Act on the Protection and Preservation of Cultural Objects (Official Gazette, No. 69/99), a sentence is added in Article 12, paragraph 5, that reads: »The decision on appeal shall be made by the Minister of Culture.«

Article 2

A sentence is added in Article 13, paragraph 5, that reads: »The decision on appeal shall be made by the Minister of Culture.«

Article 3

After Article 37, Article 37a is added that reads:

»Article 37 a

In case a cultural good is sold by auction, the organiser of the auction shall inform the holders of the right of preemption referred to in Article 37 of this Act on all initial terms and conditions of the auction sale of a cultural good and on the time and place of the auction sale 30 days before auction is held.

A representative of the holders of the right of preemption referred to in Article 37 of this Act may exercise his/her right of preemption in accordance with this Act, once the auction sale price of a cultural good is established, but not after the termination of the auction.

Upon the establishment of the price of a cultural good subject to auction, the organiser of the auction sale shall request a statement on exercising the right of preemption from all of the present representatives of the preemption right holders.«

Article 4

After Article 43 the following subtitle is added:

»6. Concessions and concession permits related to cultural objects« and Articles 43a, 43b, 43c, 43d, 43e, 43f, 43g, 43h, 43i, 43j and 43k, that read:

»Article 43a

The concession confers the right to the economic exploitation of an immovable cultural good or the right to perform economic activities on an immovable cultural good that is owned by the Republic of Croatia, a county, the City of Zagreb, a town or municipality.

Special regulations shall apply to concession issues that are not regulated by this Act provided that such regulations are not contrary to the provisions of this Act.

Article 43b

The Concession shall be granted on the basis of a public bidding, announced by the owner of a cultural good. Bidding for cultural objects that are owned by the Republic of Croatia shall be announced by the Ministry of Culture.

The public bidding referred to in paragraph 1 of this Article must contain conditions on the protection and preservation of cultural objects that shall be established by the competent body. Other bidding conditions shall require the prior consent of the competent body.

The concession is granted for a predetermined period of time that may not exceed 30 years.

Article 43c

The decision on concession shall be made by the owner of a cultural good in accordance with the conditions of the public bidding. The decision on a concession on a cultural good owned by the Republic of Croatia shall be adopted by the Ministry of Culture.

The decision on concession shall specifically establish:

- the cultural good subject to concession,
- the concessionaire,
- conditions of the protection and preservation of a cultural good established by the competent body,
- the purpose and duration of concession with the previously obtained consent of the competent body, and
- the amount of the fee or the basis for determination of the fee.

Article 43d

The concession agreement shall be concluded on the basis of the decision on concession.

In accordance with the decision on concession, the concession agreement shall specify:

- purposes and duration of concession,
- conditions of protection and preservation of a cultural good, and the manner of implementation thereof by the concessionaire,
- the amount, conditions and the manner in which the concession fee is paid,
- guarantees of the concessionaire,
- other rights and obligations of the concessionaire and concession provider, and
- reasons for the termination of the concession agreement before the expiry of the term for which the concession was granted.

Provisions of the concession agreement may not be contrary to the decision on concession. Provisions of the agreement that are contrary to the decision on concession shall be null and void.

Article 43e

Rights and obligations of the concessionaire established by the concession agreement may be transferred to another person, upon the written consent of the concession provider and the competent body.

During the concession period, the conditions and the purpose of concession may be

changed by means of an annex to the concession agreement, upon the consent of the competent body.

Article 43f

The concession agreement shall terminate:

- upon expiry of the term for which the concession was granted,
- in case of the death of a natural person or the cessation of a legal entity that is the concessionaire, if rights and obligations are not transferred within 30 days, in accordance with Article 43e, paragraph 1 of this Act,
- if the competent body establishes that the concessionaire is not implementing measures for the protection and preservation of a cultural good established by the competent body, or acts contrary to these conditions,
- if the performance of the activity for which the concession was granted was prohibited to the concessionaire by a final decision of the court or administrative body, and
- if the concession agreement is terminated by the mutual consent of the parties.

Article 43g

The concession agreement may be terminated before the expiry of the term for which the concession was granted:

- if the concessionaire has not started or completed works on the protection and preservation of the cultural good by the deadline specified in the concession agreement,
- if the concessionaire permanently ceases to perform the activity for which the concession was granted and if the rights and obligations under concession are not assumed by a new concessionaire in the manner prescribed by law, upon expiry of a six-month term from the day when it was determined that this activity ceased, and
- if the concessionaire does not utilise a cultural good or does not perform the permitted activity in the manner established by conditions on protection and preservation of the cultural good.

A commercial court with territorial jurisdiction in the territory where the cultural good is situated, shall decide on a dispute, if any, regarding the termination of validity of the concession agreement.

Article 43h

The concessionaire with whom the agreement is terminated due to the reasons specified in Articles 43f and 43g of this Act shall not be entitled to indemnity for termination of the agreement and shall hand over a cultural property to its owner within 60 days from the day on which the agreement was terminated.

Article 43i

A concessionaire must undertake measures for the protection and preservation of a cultural good in the manner and under the conditions specified by this Act and regulations adopted pursuant to this Act.

Should changes in a cultural good occur during the concession period, due to which it shall be necessary to limit the scope and duration of the concession, as well as the manner in which it is implemented, the concessionaire shall undertake all activities and measures ordered by the competent body.

Concession permits

Article 43j

A public institution that manages an immovable cultural good may grant the concession

permit for economic activities or for the exploitation of a cultural good it manages.

A concession permit may be granted for an activity that does not hinder the implementation of measures of the protection and preservation of a cultural good. The concession permit is granted for a maximum of one-year.

The concessionaire shall, prior to the conclusion of the concession agreement, provide adequate guarantees related to the measures of protection and preservation of a cultural good.

The concession agreement shall be concluded on the basis of the decision on the concession permit. Provisions of this Act relating to concession shall be apply accordingly to the agreement on concession permit.

The concession permit shall be granted by a public institution with the prior consent of the competent body. The concession permit shall contain conditions on the protection and preservation of a cultural good that are established by the competent body.

Fees for concession permits shall be the income of the public institution that manages cultural objects.

Article 43k

A public competition shall be announced for decisions on concession permits for periods over 30 days. The competition shall be announced by a public institution that manages cultural objects.«

Article 5

Paragraph 2 of Article 49 is amended to read:

»The Minister of Culture shall prescribe the conditions and the manner in which archaeological research shall be executed, as well as the procedure and manner of issuing permits for underwater activities in inland sea waters and territorial sea of the Republic of Croatia, in areas where cultural objects are located.«

After paragraph 2, a new paragraph 3 is added and reads:

»Supervision of the underwater activities referred to in paragraph 2 of this Article shall be performed by inspectors of the Ministry of Culture and authorised officers of the Port Authority Office and the Ministry of the Interior.«

Article 6

In Article 62, paragraph 1, the words: »as well as in its close vicinity« are deleted.

Article 7

After Article 69, the Article 69a is added and reads:

»Article 69a

The provisions of Articles 67 – 69 of this Act shall apply accordingly to the following:

1. archaeological objects over a hundred years old, archaeological finds and archaeological collections,
2. elements over a hundred years old that form an integral part of artistic, historical or religious monuments,
3. pictures and paintings, other than those included in subparagraphs 4 and 5 of this Article, that are created entirely by hand and in any medium and on any material,
4. handmade watercolours, gouaches and pastels created on any material,
5. handmade mosaics created in any material, other than those specified in subparagraphs 1 and 2 of this Article, and drawings created in every medium i.e. material,
6. original engravings, prints, serigraphs and lithographs with their respective plates and original posters,

7. original sculptures or statuary and copies thereof, shaped in the same way as the original, other than those specified in subparagraph 1 of this Article,
8. photographs, films and negatives thereof,
9. incunabula and manuscripts, including maps and musical scores, individually or as a collection,
10. books over hundred years old, individually or as a collection,
11. printed maps over 200 years old,
12. archive material and parts thereof that are over fifty years old,
13. collections and specimens from zoological, botanical, mineralogical and anatomical collections,
14. collections of historical, paleontological, ethnographic and numismatic value,
15. means of transport over 75 years old,
16. all other old objects that are not included in subparagraphs 1 – 15 of this Article that are between fifty and hundred years old (toys, games, glassware, articles of goldsmith's or silversmith's wares, furniture, optical, photographic and cinematographic apparatus, musical instruments, clocks and watches and parts thereof, articles of wood, pottery, tapestries, carpets, wallpapers, arms, and other parts that form the integral parts of artistic, historic and religious monuments and that are over hundred years old).«

Article 8

After Article 70, a subtitle and Articles 70a – 70e are added and read:

»10a Return of cultural objects that were unlawfully removed from other countries

Article 70a

Member States of the European Union may in the procedure prescribed by this Act request the return of cultural objects that were unlawfully removed from their territory, if they are in the territory of the Republic of Croatia, and such objects are:

1. objects that were, before or after unlawful removal from the territory of a Member State of the European Union, protected as a national treasure of artistic, historic or archaeological value by their national legislation or were specified as such in their administrative procedure, according to Article 36 of the Treaty establishing the European Community,
2. objects that belong to one of the groups of objects specified in the ordinance referred to in paragraph 2 of this Article, or form an integral part of public collections specified in the inventories of collections of museums, archives and/or libraries. For the purposes of this provision, a public collection includes sacred collections and collections that are the property of a Member State of the European Union, a local or regional government unit of a Member State of the European Union, or the property of a public institution with the head office in a Member State of the European Union, or if that institution is substantially financed by a Member State of the European Union or a local or regional government unit.

A list of the group of objects that may be regarded as national treasure within the meaning of paragraph 1 of this Article, shall be established by an Ordinance of the Minister of Culture.

The provision of paragraph 1 of this Article shall not prejudice the right of states that are not members of the European Union to carry out return of cultural objects according to multilateral and bilateral international agreements.

Article 70b

The procedure for the return of cultural objects that were unlawfully removed from the

territory of a Member State of the European Union may be initiated by a Member State before the competent court in the Republic of Croatia against the possessor or some other holder of a cultural item. The request for the initiation of proceedings shall be accompanied by the document enclosed therewith, containing the description of the item to which the request refers and the statement that this cultural item is protected under national legislation, as well as the statement of the competent authorities of a Member State of the European Union that this cultural item was unlawfully removed from its territory as of 1 January 1993 or after.

The proceedings referred to in paragraph 1 of this Article may be initiated within one year from the day on which a Member State of the European Union identified the location of the cultural item and the identity of its possessor or some other holder, and within a maximum 30 years from the day on which the cultural item was unlawfully removed from the Member State.

In case a cultural item forms a part of the public collection referred to in Article 70a, paragraph 1 of this Act, or a sacred item enjoys special protection under national legislation, the term for the initiation of proceedings referred to in paragraph 1 of this Article shall be 75 years, with the exception of those Member States that set other deadlines for the initiation of such proceedings or the deadline is established by bilateral agreements.

The procedure for the return of the cultural item may not be instituted if the removal of the cultural item from the territory of a Member State of the European Union is no longer unlawful at the moment when the proceedings should be instituted.

Article 70c

The court which received the request shall order the return of the cultural item if it establishes that it is a cultural item within the meaning of Article 70a of this Act and that this cultural item was illegally removed from the territory of a Member State of the European Union by violation of its regulations on the protection of national treasure or other regulations or if cultural objects are not returned before expiry of the deadline for the legal temporary export or by violation of rules regulating such temporary export.

Article 70d

The competent court in the Republic of Croatia that shall order the return of a cultural item, shall award to the possessor or some other holder, compensation deemed equitable under the circumstances of the case, at the expense of the Member State of the European Union that has requested the return, if the possessor or the other holder acted with due diligence when acquiring the cultural item. Regulations of the Republic of Croatia shall apply to the burden of proof.

In case of acquisition by donation or inheritance, the new possessor may not be in a more favourable position than the person from whom it has acquired the cultural item in this manner.

The possessor or some other holder shall receive the compensation referred to in paragraph 1 of this Article, after the requested cultural item is handed over to the Member State of the European Union.

Costs in respect of implementation of the decision on return of a cultural item and costs arising from implementation of measures referred to in Article 70e subparagraph 4 of this Article shall be borne by the Member State of the European Union that requested the return. The payment of the equitable compensation and costs shall not affect the right of the Member Company of the European Union to request by legal action reimbursement of the mentioned compensation and costs from the person who has unlawfully removed the cultural item.

Regulations of the Member State of the European Union to which the cultural item has been handed over shall be applied in respect of ownership over cultural item concerned.

Article 70e

The competent body shall co-operate with Member States of the European union and shall specifically:

1. upon request of a Member Company of the European Union, which shall contain necessary data especially in respect of the real or presumed place in which the requested cultural item is located, undertake activities for the purpose of finding the cultural item that was illegally removed from the territory of a Member State of the European Union and for identifying the possessor or some other holder,

2. inform the interested Member State of the European Union where the sought cultural item was found in the territory of the Republic of Croatia, and whether there are reasonable grounds to conclude that this item was illegally removed from the territory of a Member State of the European Union,

3. enable the competent authority of the interested Member State of the European Union to verify that it really is the sought cultural item within 2 months from the day of notice referred to in subparagraph 2 of this Article. If the verification is not carried out, the provisions of subparagraphs 4 and 5 of this Article shall not be applied,

4. undertake all necessary measures in co-operation with the interested Member State of the European Union for the physical protection of the cultural item,

5. prevent by necessary temporary measures any act undertaken with the purpose to avoid return of the cultural item,

6. act as intermediary between the possessor or some other holder and the interested Member State of the European Union in relation to the return of the cultural item.«

Article 9

In Article 73, paragraph 1, the words: »or in its close vicinity,« are deleted.

Article 10

In Article 78, after paragraph 1, a new paragraph 2 is added and reads:

»Officers of the competent body who perform the activities referred to in paragraph 1 of this Article shall have an official identity card as proof of their official capacity, identity and authorities. The form and manner of issuing the official identity card shall be prescribed by the Minister of Culture.«

The former paragraphs 2 and 3 shall become paragraphs 3 and 4.

Article 11

In Article 82, paragraph 1, after the word: »card« the words: »and badge« are added.

In paragraph 3, after the word: "cards« the words: »and badges« are added.

Article 12

In Article 87, paragraph 2 is amended to read:

»The certificate of temporary seizure shall be issued with the concurrent initiation of misdemeanour or criminal proceedings.«

Article 13

In Article 100, paragraph 5, a sentence is added and reads: »The decision on appeal shall be made by the Minister of Culture.«

Article 14

Article 114 is amended to read:

»Natural persons and legal entities, that are under obligation to pay income tax or profit tax and that perform an economic activity in an immovable cultural good or in the area of a

cultural-historic site shall pay the monument annuity.

Natural persons and legal entities that have business units (any permanent place where a business activity is carried out) that perform economic activities in an immovable cultural good or in the area of a cultural-historic site shall pay the monument annuity for each of their business units.

The base of the monument annuity shall be the useful surface of business premises that are located in an immovable cultural good or in the area of a cultural-historic site.

The monument annuity shall be paid monthly in the amount from HRK 3.00 to HRK 10.00 per square meter of the useful area of business premises located in an immovable cultural good or in the area of a cultural-historic site.

The amount of the monument annuity shall be prescribed by Decision of the City of Zagreb, a town or municipality.

Entities and individuals under obligation to pay the monument annuity shall submit to the competent administrative authority of a local and regional self-government unit entrusted with activities pertaining to the utilities sector the data on useful area of business premises located in an immovable cultural good or in the area of a cultural-historic site, by 31 March of the year for which the monument annuity is established.

The monument annuity shall be paid annually, in accordance with the decision on establishment of the monument annuity that shall be adopted by the competent administrative body of a local and regional self-government unit, within 15 days from the day on which the decision on establishment of a monument annuity is delivered.

If during the calendar year a natural person or a legal entity ceases to perform the activity in an immovable cultural good or in the area of a cultural-historic site, this natural person or legal entity shall pay the annual monument annuity for the time of the year during which the activity was performed.

The concessionaire referred to in Article 43.c, paragraph 2, of this Act shall be exempt from payment of the monument annuity prescribed by this Article.

Provisions of the Act on the Utilities Sector shall apply to enforcement and appeal proceedings.«

Article 15

After Article 114, Articles 114.a and 114.b are added and read:

»Article 114a

The monument annuity shall be paid by natural persons and legal entities that perform the following activities according to the National Classification of Activities:

- 01.41. Agricultural service activities; (only activities related to laying out and maintenance of gardens, parks and green areas for sport installations and the like) landscape gardening,
- 50.40.4. Maintenance and repair of motorcycles,
- 51.8. Wholesale of machinery, equipment and supplies,
- 51.9. Other wholesale,
- 55. Hotels and restaurants,
- 60.21. Other scheduled passenger land transport,
- 60.22. Taxi operation,
- 60.23. Other land passenger transport,
- 61.10. Sea and coastal water transport,
- 62.1. Scheduled air transport,

- 62.2. Non-scheduled air transport,
- 63.21. Other supporting land transport activities,
- 63.23.1. Activities in airports,
- 63.30. Activities of travel agencies and touroperators, tourist assistance activities,
- 64.2. Telecommunications (except maintenance of communication network and transfer of radio and television programmes),
- 65.12.1. Commercial banks,
- 67.13. Activities auxiliary to financial intermediation,
- 71.10. Renting of automobiles,
- 71.2. Renting of other transport equipment (except railroad vehicles, trucks, tractors and containers),
- 71.4. Renting of personal and household objects (only renting of entertainment items, bicycles and sport equipment),
- 92.33. Fair and amusement park activities,
- 92.34. Other entertainment activities,
- 92.61. Operation of sports arenas and stadiums (only golf terrains),
- 92.62.1. Activities of marinas,
- 92.62.2. Other recreational activities (only sport-recreational fishing),
- 92.7. Other recreational activities (except training of pets and other film, television and theatre activities),
- 92.71. Gambling and betting activities,
- 93.01. Washing and dry-cleaning of textile and fur products.

The monument annuity shall be paid at the rate of 0.05%. The base for the calculation of the monument annuity shall be total revenues generated by performance of the mentioned activities.

Activities of establishment, record keeping, supervision, collection and distress of the monument annuity shall be carried out by the Tax Administration. Costs arising from establishment, record keeping, supervision, collection and distress of the monument annuity referred to in paragraph 1 of this Act shall amount to 5% of the collected monument annuity.

Natural persons and legal entities shall submit data for the calculation of the monument annuity in the SR Form, which is an integral part of this Act.

Natural persons that are under obligation to pay the monument annuity shall submit the SR Form to the competent office of the Tax Administration that is competent on the basis of domicile or habitual residence, together with the Income Tax Statement, not later than the end of February of the year that follows the year for which the final calculation is made.

Legal entities that are under obligation to pay the monument annuity shall submit the SR Form to the competent office of the Tax Administration that is competent by its registered office, together with the Profit Tax Statement, not later than the end of April of the year that follows the year for which the final calculation is made.

Natural persons and legal entities shall pay a monthly advance of the monument annuity in the amount of one twelfth of the base that was calculated according to business results of the previous year. In respect of natural persons and legal entities that have just started to perform their activities, the amount of advances of the monument annuity until the first submission of statement of business results shall be determined by the Tax Administration, in the manner in which the amount of advances of income tax and profit tax are determined.

Natural persons and legal entities that are under obligation to pay the monument annuity

shall pay the monthly amount of the monument annuity within specified time limits for payment of advances of income tax or profit tax, while the difference resulting from the SR Form shall be paid within prescribed time limit for submission of the SR Form.

Supervision over calculation and payment of the monument annuity shall be carried out by the Tax Administration.

Article 114b

Revenues from the monument annuity referred to in Article 114 and Article 114.a of this Act may be used exclusively for the protection and preservation of cultural objects, of which 60% is paid in favour of the City of Zagreb, a town or municipality on the territory of which the annuity was collected, and 40% in favour of the State Budget for the implementation of the national programme referred to in Article 110 of this Act.«

Article 16

In Article 118, paragraph 1, after item »2« items 3 and 4 are added and read:

»3. does not submit data for determination of the monument annuity pursuant to Article 114, paragraph 6,

4. does not submit data for determination of the monument annuity pursuant to Article 114.a, paragraph 4.«

Article 17

Article 123 is amended to read:

»Article 60 of this Act shall apply in the area of the protected cultural-historic site until the adoption of the urban zoning plan referred to in Article 57 of this Act.«

Article 18

After Article 126, Article 126 a is added and reads:

»Article 126a

Article 69.a of this Act shall apply as of the date of the accession of the Republic of Croatia to full European Union membership.«

Article 19

The Minister of Culture shall issue the implementing regulations pursuant to this Act within six months from the date of entry into force of this Act.

Article 20

This Act shall enter into force on the eight day from the day of its publication in the Official Gazette.

Class: 612-01/03-01/01

Zagreb, 10 September 2003

CROATIAN PARLIAMENT

President

of the Croatian Parliament

Zlatko Tomčić, m.p.