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# The Public, Community and Identity in the Legal Protection of Archaeological Heritage in Slovenia

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**ABSTRACT:** This article provides a brief overview of the social phenomenon of the 'public', its role in the protection of cultural heritage, and a commented review of the heritage protection legislation in the territory of present-day Slovenia, with an emphasis on public involvement.

Forms of archaeological discourse and the intensity of public involvement largely depend on heritage legislation. A review of legal acts in the field of cultural heritage protection from the late 18th century to the present reveals a growing role of the public in the discourse on archaeological heritage. Imperial decrees from the late 18th century, during the era of the absolutist monarchy, established the state's right of ownership over archaeological finds that were preserved in court collections. In the second half of the 19th century, as the bourgeois public gained social influence, archaeological remains became an integral part of public museums, and the right to protect them was assigned to the experts educated in the humanities employed in public institutions. This system of archaeological heritage protection on the territory of Slovenia remained in place even during the socialist period following World War II. However, during socialism, the subject of heritage protection began to shift, from elite social classes, largely originating from the bourgeois public, toward broader segments of society. Legal provisions dealing with archaeological and broader cultural heritage began addressing the general public as the bearer of heritage, although its role remained limited to that of a user, without the right or opportunity to participate actively in heritage protection processes. The shaping of heritage narratives remained the domain of experts employed by public institutions that operated under relatively strict political oversight. With the democratization of society in the final decade of the 20th century, the public began to take an active role in heritage protection processes. Legislation followed this shift, and by 2008 it enabled public involvement in specialist activities, such as the search for archaeological remains, which were previously the exclusive domain of professionals employed by public heritage institutions. Heritage communities that demonstrate an ethical relationship towards their heritage have begun to participate as active subjects in the processes of heritage protection, with their narratives now recognized as legal, legitimate and necessary components of the heritage discourse.

**Keywords:** Public Archaeology; Heritage Communities; Cultural Heritage Legislation in Slovenia; Participatory Heritage Discourse; Collective Memory and Identity Formation

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## 1 Introduction

In his foundational study of the social phenomenon of ‘the public’, Jürgen Habermas argued that the public, as a heterogeneous bearer of diverse public opinions, must always be understood within its historical context. Habermas assigned the public the role of a generator of public opinion, which is shaped through public discourse with the help of the media independently of the authorities. In Europe, this form of the public emerged during the rise of mercantilist capitalism in the 18th century and the associated social processes (Habermas 1989, 36–37).

Martin Heidegger in his work *Being and Time*, published in 1927 (Heidegger 1997), argued that a human being does not exist as an autonomous and self-sufficient entity outside of a social context. Human existence becomes fully self-defined only as ‘Being-here’ (*Dasein*), which means being in the world. ‘The world’ determines the being and is the indispensable context of the Being in itself (Heidegger 1997, 99). A human is defined as a being only within the environment in which they live. In addition to the physical and geographical characteristics of the environment, a crucial role is played by the primary social environment, the community.

The environment into which a person is situated, and which influences their perception, conditions their actions, and serves as the self-defining context of their being, was termed *habitus* by Pierre Bourdieu. This concept refers to the way individuals, through their activity within a community, develop habits, patterns, thoughts and behaviours in accordance with social rules and expectations (Bourdieu 2013, 18). A particular *habitus* develops exclusively within a specific environment, among a particular group of people: in a community (*ibid.*, 31). A person who becomes uprooted from their community loses part of themselves, their Being-here can not fully develop.

The sense of belonging to a community is one of the fundamental human needs. Community affiliation develops as a process in which individuals, through collective memory and public discourse, shape their cultural heritage (Weil 2023, 33). Laurajane Smith, in her book *Uses of Heritage*, argues that the establishment of ‘tradition’ is a fundamental tool for communicating the heritage narrative, which is intended to inspire in members of the local community a desire to protect archaeological heritage as a shared value.

However, tradition should not be understood as a rigid, unchanging entity created in the past. Heritage value can be found only in connection with authentic interpretation of traditions and material culture (Smith 2006, 295). Heritage communities must be recognized as essential stakeholders in the consideration and evaluation of interventions in heritage places. Through such processes, a community generates its own collective identity (ibid., 176). The material remains and traces of human life in the past represent the historical roots of today's communities, without which an individual is incapable of true self-awareness and identity in the world (Curk 2022, 284). In order to build a collective identity based on the value of mutual respect, it is essential to develop discursive practices that enable community members to renew their heritage narrative (Pirkovič 2023, 70).

Active involvement of the public in cultural heritage protection processes can have highly beneficial social effects. Among other things, it strengthens social cohesion and fosters a sense of belonging to the local community and place of origin (Rosenberg 2011).

Community members' participation in cultural heritage preservation projects encourages the development of communal awareness, which directly and positively influences the quality of life (Fakin Bajec 2016).

It is clear from the above that an engaged public that values its cultural heritage represents a key subject of the heritage discourse. Therefore, it is essential that legal frameworks provide opportunities for the active participation of heritage communities in cultural heritage protection processes.

## **2 Legal frameworks for public involvement in the heritage discourse**

The origins of archaeological heritage protection legislation on Slovenian territory can be traced to imperial decrees, with which the court of the absolutist Habsburg monarchy asserted its right to ownership of archaeological finds from within the empire from the late 18th century onward (Kirsch 1937, p. 1 and fn. 1). However, the beginnings of collecting material remains of the past among the Habsburg elites go even further back, to the Renaissance period, when the heritage community of European absolutist rulers started to define their identity through the humanist tradition of classical antiquity (Sandbichler 2015, 184).

In the early decades of the 19th century, the heritage discourse, which until then was led primarily by the high nobility, began to be taken over by the 'bourgeois public' (as defined by Habermas). A significant component of this process in Slovenian lands was the establishment of provincial museums in Graz in 1811 (Becker 2016, 75) and Ljubljana in 1821 (Baš 1955, 15), which, as part of the state structure for archaeological heritage protection, were responsible for safekeeping of archaeological heritage and its communicating to the public. The increase in their collections was supported by a state decree from 1846, which required state authorities to report archaeological finds of potential scientific or artistic value to the provincial office, which would then forward the finds to appropriate public institutions or societies (Kirsch 1937, 3). The majority of museum visitors belonged to the bourgeois public, which at that time began to assume an important societal role. This group reinforced its social identity through a classical education, which included knowledge of cultural heritage (Perko 2014, 45).

With the establishment of the so-called Central Commission for the Research and Preservation of Architectural Monuments (*Zentralkommission zur Erforschung und Erhaltung der Baudenkmale*) in 1850, composed of members from various ministries and research institutions, the state formally created a government service with public authority that actively took responsibility for the protection of immovable and movable cultural heritage (Pirkovič 2017, 71). By defining its areas of activity, including 'the investigation and protection of ruined and earth-covered building remains, graves, ancient roads, etc.', the Commission also assumed responsibility for archaeological sites. Its fieldwork was carried out by voluntary collaborators (conservators), whose primary tasks were to document monuments and provide assistance when needed (Jogan 2008, 27). These conservators were supported by civil servants from state construction offices, who were required to report any discoveries of archaeological remains made during construction works (Kirsch 1937, 3–5). In 1911, a new statute was adopted, according to which the Commission was renamed the Central Commission for Monument Protection (*Zentralkommission für Denkmalpflege*). The Commission's administrative body became known as the 'State Monument Office' (*Staatsdenkmalamt*), and the new position of 'provincial conserva-

tor' (*Landeskonservator*) was introduced (*ibid.*, 11). This was a consequence of the increasing demands of individual regions in the empire for local autonomy (Jogan 2008, 41).

The organization of archaeological heritage protection did not change significantly after the dissolution of the Austro-Hungarian Monarchy. After the end of World War I, the heritage protection system in Slovenia was established based on the role of the former Provincial Conservator for Carniola, a position held by France Stele since 1913, and was implemented in a manner consistent with the practices established during the Austro-Hungarian period. The Kingdom of Yugoslavia, during the inter-war period, failed to establish its own legislation in the field of cultural heritage protection (Zupan 2014, 36–39). Immovable cultural heritage was protected only by the Forest Act of 1931 (Jogan 2008, 41–42) and the Building Act (Ivanc 2012, 21).

Heritage protection was not restructured until after World War II. The systemic solutions at that time, with the state as the central subject in heritage protection matters, were still heavily inspired by the Austro-Hungarian model (Pirkovič 2017, 72). The first law that regulated the protection of cultural heritage in Slovenia after the war was the federal Yugoslav Law on the Protection of Cultural Monuments and Natural Landmarks, adopted in 1945 (Jogan 2008, 56). On this basis, the Act on the Protection of Cultural Monuments and Natural Sites in the People's Republic of Slovenia<sup>2</sup> in 1948 (hereinafter: 1948 Act) was adopted (Ivanc 2012, 21). The Act designated the Institute for the Protection and Scientific Study of Cultural Monuments and Natural Sites of Slovenia as the public service body responsible for implementing the protection of cultural heritage. The Institute operated under the direction of the Minister of Education of the People's Republic of Slovenia. Other public institutions in the field of protection were also permitted to participate in heritage conservation (1948 Act, Article 2). Archaeological research could only be conducted with permission from the Institute, and any excavated archaeological finds became state property (1948 Act, Articles 8 and 9). According to the 1948 Act, the roles of

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<sup>2</sup> Zakon o varstvu kulturnih spomenikov in prirodnih znamenitosti. Uradni list LRS, No. 23/1948, and 22/1958.

safeguarding and researching cultural heritage were assigned exclusively to public institutions established directly by the ministry responsible for education. The public was not represented as a stakeholder in the protection of heritage. The Act on the Protection of Cultural Monuments and Natural Landmarks<sup>3</sup> from 1958 defined this topic in a similar way

A different, more active role for the public in cultural heritage protection was envisioned by the Cultural Monuments Protection Act<sup>4</sup> of 1961 (hereinafter: 1961 Act), whose purpose was 'to protect the material heritage of Slovenian culture and other cultures within the territory of the Socialist Republic of Slovenia and to foster in citizens a sense of responsibility and care for it'. The law was intended to ensure the necessary conditions 'so that cultural monuments, in accordance with their purpose and significance, would serve the cultural needs of the community' (1961 Act, Article 3). This Act introduced the decentralization of the public heritage protection service. The responsibility for heritage protection was assigned to public institutes for monument protection, established by municipal assemblies (1961 Act, Articles 6 and 42). Among their tasks, the institutes were required to encourage citizen interest in the protection and maintenance of cultural monuments and promote their participation in the identification of objects deemed to be cultural monuments (1961 Act, Articles 13 and 43). This clearly marks the early beginnings of active public involvement in cultural heritage protection (Jogan 2008, 85).

Despite this encouragement of public involvement in preservation and maintenance, the monopoly over archaeological research remained with public heritage institutions and the university possessing the necessary material resources and expert personnel. And only if they had obtained prior approval from the Institute for Monument Protection. An important provision introduced by this act, in terms of public participation in archaeological heritage protection, was the requirement that archaeological finds should, as a rule, remain in the area where they were discovered (1961 Act, Article 32), which was a prerequisite for fostering a sense of

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3 Zakon o varstvu kulturnih spomenikov in naravnih znamenitosti. Uradni list LRS, No. 22/1958.

4 Zakon o varstvu kulturnih spomenikov (ZNKD). Uradni list LRS, No. 26/1961; Uradni list SRS, No. 11/1965, and 1/1981.

connection between local communities and their archaeological heritage.

In a similar spirit, the role of the public was also defined in the Natural and Cultural Heritage Act,<sup>5</sup> adopted in 1981, which again reunited the protection of natural in cultural heritage (hereinafter: 1981 Act): ‘Through its cultural, scientific, historical or aesthetic value, natural and cultural heritage is intended for all working people and citizens. The protection of natural and cultural heritage is the responsibility of every citizen and of society as a whole. Everyone has the right, under equal conditions, to become acquainted with and enjoy the values of natural and cultural heritage’ (1981 Act, Article 4).

The Act specified that socio-political communities (slov. *družbenopolitične skupnosti*) were the ones responsible for defining and implementing heritage protection policies within the system of social planning, as well as for promoting self-management agreements and participating in societal dialogue on issues of natural and cultural heritage protection (1981 Act, Article 8). However, in practice, the competencies concerning heritage protection remained limited to the heritage protection institute, museums, and archives, all of which were established by the state political authorities (1981 Act, Article 13). The only exception, where one might see a degree of decision-making power delegated to the local political communities, and thus indirectly to the local public, was the Act, by which a cultural monument gained legal protection. Such an Act was adopted by municipal assemblies, but only after receiving the opinion or proposal of the state heritage protection organization (1981 Act, Article 18).

During the period of socialist rule in Slovenia, the public was by definition included in the formation of public social discourse. However, it is important to emphasize that public discourse in the field of culture, at least in the first decades after World War II, was strictly monitored and directed in accordance with the ideology of the ruling Communist Party (Dedić 1979). Alternative narratives during this time had no opportunity to influence the broader community.

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5 Zakon o naravni in kulturni dediščini (ZNKD). Uradni list SRS, No. 1/1981, and 42/1986; Uradni list RS, No. 26/1992, 75/1994 – ZUIPK, 7/1999 – ZVKD, and 56/1999 – ZON.

On an international scale, the idea of involving the public in heritage protection emerged in the mid-1970s, when the philosophy of integrated conservation or the concept of holistic conservation spread (Ivanc 2012, 48). The public, understood as an active and independent generator of public opinion, shaped through public discourse and free from ruling power structures, began to emerge in Slovenia only in the final years of the socialist regime, in the mid-1980s. At that time, a Habermasian literary public sphere, independent of state politics, began to take shape, offering new perspectives on social reality (Mastnak 2023). The democratic ideals advocated by civil society during this period eventually led to the independence of the Republic of Slovenia and the establishment of a democratic state, which in turn influenced the structure of cultural heritage protection. After Slovenia gained political independence, all legislation in the field of heritage protection was based on the Constitution of the Republic of Slovenia<sup>6</sup>, adopted in 1991 (hereinafter: Constitution). It clearly stipulates that the state takes care of its cultural heritage on its territory (Constitution, Article 5). And further, that everyone is obliged to take care of the cultural heritage in accordance with the law (Constitution, Article 73). Whereby, based on the grammatical provision, the obligation of the state and local communities is broader, since the constitution prescribes the duty of preservation, which is a broader concept than the duty of protection, which is assumed to be the obligation of everyone (Ivanc 2012, 29).

The first Cultural Heritage Protection Act following the independence of the Republic of Slovenia<sup>7</sup>, adopted in 1999 (hereinafter: 1999 Act), still largely continued the principles of cultural heritage protection from the period of socialist governance. Responsibilities in the field of heritage protection were assigned to the state, local communities, and the public heritage protection service (1999 Act, Article 1). The Act defined heritage

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6 Ustava Republike Slovenije. Uradni list RS, No. 33/1991-I, 42/1997 – UZS68, 66/2000 – UZ80, 24/2003 – UZ3a, 47, 68, 69/2004 – UZ14, 69/2004 – UZ43, 69/2004 – UZ50, 68/2006 – UZ121,140,143, 47/2013 – UZ148, 47/2013 – UZ90,97,99, 75/2016 – UZ70a, and 92/2021 – UZ62a).

7 Zakon o varstvu kulturne dediščine (ZVKD). Uradni list RS, No. 7/1999, 110/2002 – ZGO-1, and 126/2003 – ZVPOPKD.

protection as being in the public interest due to its historical, cultural, and civilizational significance (1999 Act, Article 2). It took a major step towards gaining public involvement in heritage protection, by highlighting the integration of heritage into spatial planning and everyday life as a central function, particularly in the areas of education, transmission of knowledge and experiences from the past, the strengthening of national identity, and cultural self-awareness (1999 Act, Article 3). It also emphasized that the preservation and protection of heritage is a responsibility shared by all (1999 Act, Article 4). The Act also took a certain step towards inclusion, since private individuals and legal entities could carry out certain heritage protection tasks, such as data collection, storage and safeguarding of movable heritage, interventions, exhibitions and public presentations, but of course only with the permission from the minister (1999 Act, Article 27).

Since the turn of the century, research and studies on participatory governance in cultural heritage have become increasingly extensive (Pirkovič 2020, 831). In the Slovenian heritage protection discourse, the public has been regarded as an important actor in the heritage discourse at least since 2008, when the Council of Europe's Framework Convention on the Value of Cultural Heritage for Society (adopted in 2005; hereinafter: the Faro Convention) was ratified. The Faro Convention devotes special attention to the 'heritage community' for the first time (Ivanc 2012, 49), which it defines as a group of people who value specific aspects of cultural heritage and seek to sustain and transmit them to future generations through public action (Faro Convention, Article 2). This refers to a segment of the public that defines itself as a community through discursive practices based on collective memory. It has to be stated, that in accordance with the Slovenian Constitution, international treaties like the Faro Convention are directly applicable and, in terms of the legal order, stand above the sectoral law (Jogan 2008, 13).

Since 2017, ICOMOS doctrinal documents have also adopted the term heritage community to define groups of people who maintain a particular relationship with heritage (Pirkovič 2020, 831).

The current Cultural Heritage Protection Act<sup>8</sup> adopted in 2008 (hereinafter: 2008 Act), introduced several significant innovations regarding public participation in heritage protection. This Act defines heritage as including a value-based and ethical relationship that the public holds toward the remnants of the past:

Heritage comprises assets inherited from the past that Slovenian citizens, Slovenes, members of the Italian and Hungarian national communities, members of the Roma community, and other citizens of the Republic of Slovenia, recognize as reflections and expressions of their values, identities, ethnic belonging, religious and other beliefs, knowledge, and traditions. Heritage also includes environmental aspects arising from the interaction between people and their surroundings over time. (2008 Act, Article 1)

A key novelty introduced by this Act is the recognition of public participation in heritage protection as a public benefit. The Act further stipulates that in fulfilling the public benefit of heritage protection, the state, regions, and municipalities must cooperate with heritage owners, businesses, non-governmental organisations and civil society (2008 Act, Article 2). Public engagement is also highlighted in the definition of ‘social significance,’ which refers to the value that heritage holds for communities and individuals due to its cultural, educational, developmental, religious, symbolic, or identity-related potential, or for disciplines such as anthropology, archaeology, architecture, ethnology, art history, and history (2008 Act, Article 3). Thus, the essential quality of heritage lies in the value it holds for both the community and individuals, as well as researchers in this field. The right to heritage may only be restricted in the public interest and with respect for the rights of others (2008 Act, Article 4).

The act also explicitly defines the role of non-governmental organisations (hereinafter: NGO) as part of the public (Jogan 2008, 159). An NGO that significantly contributes to heritage protection, the promotion of heritage awareness, dissemination of knowledge and skills, and educa-

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8 Zakon o varstvu kulturne dediščine (ZVKD-1). Uradni list RS, No. 16/2008, 123/2008, 8/2011 – ORZVKD39, 90/2012, 111/2013, 32/2016, 21/2018 – ZNOrg, and 78/2023 – ZUNPEOVE.

tion and lifelong learning, may obtain the status of an 'NGO acting in the public interest in the field of cultural heritage protection. This status is granted under the laws governing public interest in culture and the status of NGOs' (2008 Act, Article 107). Such an organization is entitled to submit opinions and proposals on heritage protection matters, participate in advisory bodies of the ministry, regions, and municipalities, and contribute to the preparation of strategies (2008 Act, Article 108).

A notable innovation introduced by the 2008 Cultural Heritage Protection Act concerns the public involvement in the right to amateur search for archaeological remains. Unlike previous legal frameworks that defined the search for archaeological remains as an exclusive right of the state heritage protection service, the 2008 Act allows members of the public to actively participate in this process. However, the search is permitted only under certain conditions, and the key provision in this regard is that all discovered archaeological finds remain the property of the state (2008 Act, Article 6). Moreover: 'The search for archaeological remains and the use of metal detectors and other technical devices for this purpose are permitted only with prior authorization from the heritage protection institute, provided that the search is conducted by an amateur qualified for searching archaeological remains' (2008 Act, Article 32). To regulate such activities, the Regulation on the Search for Archaeological Remains and the Use of Technical Devices for this Purpose (in herein: 2014 Regulation) was adopted<sup>9</sup>. A person acquires the right based on a permit issued by the Institute after completing a training course (2014 Regulation, Article 4). Understanding public motivation is crucial for developing effective public engagement strategies in this area. The most common motivation among searchers is the desire for a direct connection to the past, a feeling that is uniquely experienced through the discovery of archaeological objects, something that museum displays cannot replicate (Gaspari 2025, 35). An important dimension of public activity in archaeological searches is in the integration of the public in 'citizen science' processes. Through proper

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<sup>9</sup> Pravilnik o iskanju arheoloških ostalin in uporabi tehničnih sredstev za te namene. Uradni list RS, No. 49/2014.

documentation procedures, participants can contribute to the shared archaeological data repository, which in turn fosters a sense of inclusion and belonging to the research and heritage community (Rutar 2025a, 2025b). The right to search is closely linked to the understanding that a prerequisite for full public participation in heritage protection is the broadening of understanding regarding the values associated with heritage, and the encouragement of the public to adopt these values as their own (Pirkovič and Šantej 2012, 13–14).

## Conclusion

Human beings have an existential need to belong to a community, as it is only within and through the community that they can define themselves. A community is by definition rooted in the past; however, tradition alone does not guarantee its existence in the present. This is only made possible through the performance of heritage-related discursive practices through which members of the community articulate their heritage narrative and define and renew their sense of communal belonging, thereby ensuring the continued existence of the community.

Archaeological remains represent an important element of a community's historical connection to its physical environment. The heritage discourse, which includes narratives related to archaeological heritage, contributes to the structural stability and symbolic rootedness of the community in the material world. For the discursive renewal of the community to be effective, its members must actively participate in the shaping of the heritage narrative. Experts from core heritage disciplines can offer support and guidance in this process, but it is up to the community members themselves to internalize these narratives and integrate them into their own communal heritage story.

Over the past two centuries, since the time when archaeological remains in the Slovenian territory became part of the broader heritage discourse, archaeological heritage legislation has been continuously evolving, from absolutist to socialist to democratic approaches. Today, heritage communities formally have the right to actively participate in the archaeological heritage discourse. However, a legally guaranteed right to participate does not necessarily equate to actual active involvement. To achieve this, the

promotion of an attitude of active citizenship is required, one that exercises its constitutional right to co-create and protect cultural heritage in accordance with its own desires, needs, and beliefs.

Active participation of the local heritage community in co-creating a collective memory has a strong community-building potential that the activities of outside experts can never achieve. Therefore, public participation should more often reach beyond amateur archaeological search and data collection, for example through in-site management that engages heritage communities, informal inspections by locals and interpretation projects carried out by amateurs. Given the current social situation, in which identity communities are systematically being dismantled through the monetization of social systems, it would be essential for heritage experts to encourage the empowerment of heritage communities to take the initiative in managing their archaeological heritage by themselves. We can only hope that the new Slovenian legislation in the field of cultural heritage protection, which is currently being prepared, will enable and actively encourage such activities.

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