

BELGIAN LAWS REGARDING COIN FINDS

Between 1980 and 1989 successive reforms transformed the kingdom of Belgium in a federal state. Each region or community has full and independent legislative power on most aspects of civil life and archaeological heritage is one of these. So besides national (federal) laws applying to the whole of Belgium, laws affecting only parts of Belgian territory do exist side by side.

The national law regarding (coin) hoards

Article 716 of the Belgian Code of Civil Law (ca. 1831: *Burgerlijk Wetboek* in Dutch; *Code Civil* in French and *Bürgerliches Gesetzbuch* in German) says:

«La propriété d'un trésor appartient à celui qui le trouve dans son propre fonds; si le trésor est trouvé dans le fonds d'autrui, il appartient pour moitié à celui qui l'a découvert, et pour l'autre moitié au propriétaire du fonds. Le trésor est toute chose cachée ou enfouie sur laquelle personne ne peut justifier sa propriété, et qui est découverte par le pur effet du hasard [see also article 552 of the code of civil law concerning the ownership of the sub-soil].»

So just as in Roman law, a hoard found by the landowner is his full property. If someone finds a hoard on someone else's ground, it belongs equally to the finder and the landowner. A hoard, says the law, is anything hidden or buried whereupon no one can claim ownership and which is found by chance.

This definition of a hoard is very vague. Nothing is said about the quantity nor the value of the find. The law was not meant to protect archaeological heritage, but simply to settle questions on the ownership of precious objects found in the ground. A hoard, says the law, has to be found by pure chance. So a hoard discovered during archaeological excavations or by a metal detector cannot be considered as found by accident; if no special agreement on the ownership of the finds between the landowner and the excavator/finder exists, ownership passes automatically to the landowner. Of course trespassing is forbidden and any find resulting from an unauthorised access to a land will have to be restored to the landowner. The right to claim ownership of a buried or hidden hoard expires after 30 years (art. 2262 of the Code of Civil Law),

Some local authorities of villages, towns or provinces and even 'the state' have regulations concerning the ownership of objects found during works on public property. So a departmental order of 14 October 1964 (published in the *Moniteur belge* of October 17th 1964) states that all objects (coins and medals are mentioned) found

during public works become property of the authorities. It is not clear if this order was taken over by the regions or communities after the reform of the Belgian state.

Although the Belgian law on hoards looks simple and just, it provokes some problems. Several categories of coin finds are not covered by this law. Purses, votive deposits and single finds were not always hidden or buried and could never be classified as hoards. Strictly speaking they could be considered as abandoned or lost objects. If found in public areas they should be reported to the municipal authorities; if the object is not claimed by its owner in six months, ownership passes to the authorities (law of December 30th 1975, *Moniteur belge*, January 17th 1976, p. 510-512). It is clear that this law was not made to regulate archaeological discoveries.

Another problem created by the ‘treasure trove law’ is the fact that frequently finders are not eager to reveal the exact findspot and that ‘surprisingly’ most hoards tend to be found on one’s own property!

The Walloon Region

In 1982 the French Community voted a decree forbidding the use of the metal detector for ‘archaeological purposes’ in the French speaking part of Belgium. Publicity for metal detecting devices referring to the archaeological heritage or hoards was also forbidden. Only the responsible minister could allow a limited use of the metal detector when necessary in the interest of archaeology (decree of July 1st 1982, *Moniteur belge*, 14 August 1982, p. 9326). This decree was abolished and replaced by a new one by the Walloon Region on July 18th 1991 (published in the *Moniteur belge* of 1 January 1992, p. 5-11 and *Code Wallon*, Namur, 1992, p. 194-197, art. 377-384). Use of the metal detector for archaeological purposes and publicity for it remains forbidden. The detector can only be used on officially authorized excavations (art. 384).

Article 390 of the *Code Wallon* declares that any fortuitous archaeological find has to be reported within 8 days to the communal authorities of the place of discovery and to the landowner. Within 8 days the mayor of the village has to transmit this declaration to the Walloon government.

Although metal detecting is forbidden, the Walloon Region has not yet voted a decree providing for the enforcement of the law so that actual steps to prosecute offenders are difficult (but not impossible as a sentence could be pronounced based on article 60 *quinto* of the *Code Wallon*). As the law is not respected, an archaeologist of the Walloon region, who became desperate at the continuous plundering of an

important Roman hillfort by detectorists, decided to sow thousands of copper nails on the site.

The Brussels-Capital Region

Cultural and archaeological heritage in the Brussels-Capital Region is settled in the ordinance of March 4th 1993. The only paragraph which concerns coins and coin finds also, is found in chapter X article 44 where it is said that for the next three years (sic) any fortuitous archaeological find has to be declared within 8 days to the Brussels government and to the landowner. No ordinance relating to metal detectors exists.

The Flemish Community

Between 1993 and 1995 one decree, several governmental orders and one departmental order concerning the archaeological heritage of Flanders have been published (decree of June 30th 1993, published in the *Moniteur belge* September 15th 1993; governmental orders of: January 12th 1994, published April 7th 1994; April 20th 1994, published July 15th 1994; April 26th 1995, published August 30th 1995; departmental order of May 29th 1995, published August 23th 1995). Although all these documents are necessary for the enforcement of the law, only the decree of June 30th 1993 and the governmental order of April 20th 1994 contain details on archaeological discoveries and metal detecting.

Article 8 of the decree of June 30th 1993 specifies that each archaeological ‘monument’ found by chance has to be declared within three days at the Institute for the Archaeological Heritage of the Flemish Community in Zellik (near Brussels). Each find has to be kept at the disposition of the Institute for some time.

Article 9 says that the use of a metal detector with the intention to search for ‘archaeological monuments’ is strictly forbidden. The same article specifies that permission to use a metal detecting device can be obtained by the government or its representative in special cases, e.g. for an authorised excavation or research project.

The meaning of the term ‘archaeological monument’ is explained in the decree as «alle overblijfselen en voorwerpen of enig ander spoor van menselijk bestaan die getuigenis afleggen van tijdperken en beschavingen waarvoor opgravingen of vondsten de belangrijkste of één van de belangrijkste bronnen van informatie zijn... » (« all remains or objects or any other trace of human activities which give evidence for periods and civilizations for which excavations or finds are the main or one of the main sources of information... » [author’s translation]). This of course is pretty

vague; and although we are sure when Celtic and Roman coins as well of those of the Dark Ages are concerned, this becomes less obvious for Late Medieval and more recent hoards, coins, medals, lead seals, etc.

Article 34 suggests that the government or its representative could always arrange a transfer of a casual find from the finder to an institution. There is no obligation at all.

Article 19 of the governmental order of 20 april 1994 stipulates that anyone wishing to use a metal detector for archaeological purposes (amateurs as well as professional archaeologists) can obtain permission to use these devices from the government or its representative. The applicant has to show that he is a qualified archaeologist (university degree or by self-study and publications) and has to submit the following documents: a copy confirming the existence of an official agreement that excavations are allowed on the site, technical details concerning the used equipment, a copy of the property plans of the area that will be searched, the name of the landowners of the site and a copy of the written agreement between the landowners and the applicant settling the ownership of the finds and, finally, the exact period of the intended use of the metal detector.

So strictly speaking the use of a metal detector can never be permitted outside official excavations (or prospections) and most detectorists do not meet the necessary professional qualifications stipulated in the decree.

Conclusion

So while finds of hoards and of lost or abandoned objects are regulated by national laws, the reporting of the finds and the prohibition of the use of metal detecting devices are settled by regional decrees or ordinances.

The legal owner of, e.g., an important Roman coin hoard is free to sell his treasure; he can even export it to whatever country he wishes. The Belgian state has no more rights to acquire these objects than any other citizen.

One of the consequences of these new laws is that metal detectorists, as they could be accused of illegal activities, distrust more than ever museum numismatists or official archaeologists. Although searching goes on, hardly any object found outside official excavations is shown. Detectorists are far from being 'persecuted' in Belgium. Only one (!) detectorist in Flanders and four in Wallonia were charged with illegal prospecting, but it is very probable that these cases will be closed without prosecution. Most police officers simply chase them off the sites. It will always

be hard to prove that the metal detector was actually used to look for ‘archaeological monuments’ or archaeological objects and other offences are considered as greater priority.

Some Belgian museums avoid ‘difficult questions’ when coin hoards are offered for sale ; and even archaeologists issue sometimes passes for detectorists without following the exact legal procedure. All this shows that these laws are not very effective and that perhaps -prior to any reglementation- it would have been wiser if all interested parties would have been consulted.

It is sad to see that only through a very free interpretation of these new laws does some co-operation between responsible detectorists and archaeologists remain possible. But acting in this way saves hundreds of coins per year for our knowledge of the past; these at least will not disappear into the anonymous antique trade, where still more and more illegally discovered objects show up year after year.

Postscript (2003)

Some recent changes to the Belgian legislation are of interest to numismatists and should be added to our text, originally published in 1996.

Flanders

The Flemish Community published a decree (law) on the archaeological heritage of Flanders in the *Moniteur belge* of March 24th, 2003. In this law (dated February 28th, 2003) one, seemingly minor, change to the original decree of June 30th, 1993 is of interest. In the old law, that forbade the use of metal detectors, the definition of an “archaeological monument” was too vague. It almost allowed detectorists to search for post medieval objects. The passage quoted above (cf. paragraph on the “Flemish Community”), was modified as follows: « [it is forbidden to search for] remains or objects or any other trace of human activities which give evidence for periods and civilizations for which excavations or finds are a meaningful source of information... » [author’s translation]). Though still ambiguous it should permit the authorities to discourage metal detecting.

Wallonia

While archaeological excavations fall under the authority of the Walloon Region, the protection of movable antiquities, works of art and major art or archaeological collections are the responsibility of the French Community (do not forget that Belgium is a federal state with 6 [six] parliaments !). Its government promulgated a law on July 11th, 2002 (published in the *Moniteur* on September 24th, 2002) that

concerns also coin finds and important numismatic collections housed in the French speaking part of Belgium (Wallonia and some institutions in Brussels). It allows the government of the French Community to draw up a list (not done yet) of very important objects and collections (also numismatic) in private hands. In the end, collections listed as “regional treasures” can only be sold after consulting the government.

More importantly, this law gives the French Community the right to obtain any archaeological item older than 100 years by pre-emption. At a public auction they can acquire any object they are interested in at the highest bid. However, it might take some time before the special civil servants who will execute this measure are appointed...

National level

On the national or federal level nothing has changed. The Convention of Valetta/Malta on the protection of archaeological heritage (European Treaty Series no. 143) was approved by almost all regional parliaments of Belgium and by the national government (January 30th, 2002). Though its principles and measures of protection have inspired the different archaeological decrees, the application and execution of all aspects of the Valetta Convention is a regional matter that still awaits its completion.

No measures were taken by the government or by the professional archaeologists to guide or inform metal detectorists, nor did any body consider collaborating more closely with them as their activities are considered to be illicit. There can be no doubt about the importance of protecting our archaeological and numismatic heritage, but it still remains sad that a large group of people, with a real interest in history, archaeology or numismatics are automatically and without consultation driven into illegality.

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