

# **PROTECTION OF THE ARCHAEOLOGICAL AND PALEONTOLOGICAL HERITAGE**

**Act No. 25743**

**Objectives, archaeological and paleontological property.**

**Powers and enforcement agencies. Ownership of archaeological and paleontological property. Official Registry of Archaeological and Paleontological Sites and Official Registry of Archaeological Objects or Collections or Paleontological Remains. Licenses. Limits on private property ownership. Infringements and sanctions. Offenses and penalties. Transfer of archaeological and paleontological objects. Special protection of standard paleontological materials. Supplementary provisions.**

**Adopted on 4 June 2003**

**Promulgated on 25 June 2003**

Be it enacted by the Senate and the House of Representatives of Argentina in Congress assembled,

## **PROTECTION OF THE ARCHAEOLOGICAL AND PALEONTOLOGICAL HERITAGE**

### **Objectives, archaeological and paleontological property**

**SECTION 1** — The purpose of this act is the preservation, protection and safeguard of the archaeological and paleontological heritage as an integral part of the Nation's cultural heritage and its use in the scientific and cultural fields.

**SECTION 2** — The archaeological heritage includes movable and immovable property or traces of any nature whether on or below the surface of the earth or under the Nation's territorial waters which may provide information on the sociocultural groups that inhabited the country from pre-Columbian to recent historical times.

The paleontological heritage includes organisms or parts of organisms or traces of the vital activity of organisms that lived in the geological past, and every natural concentration of fossils in rock or sediments on or below the surface of the earth or under the Nation's territorial waters.

**SECTION 3** — This act shall apply to the entire Argentine territory.

### **Powers and enforcement agencies**

**SECTION 4** — The federal government shall have the following exclusive powers:

(a) Safeguarding the archaeological and paleontological heritage. To that end, it shall adopt measures aimed at its preservation, research and dissemination;

(b) Protecting and guarding the archaeological and paleontological heritage at the international level by preventing and penalizing illicit imports and exports. To that end, it shall take action to arrange the return of archaeological and/or paleontological property to the relevant country of origin.

**SECTION 5** — The National Institute of Anthropology and Latin American Thought, under the scope of the National Secretariat for Culture, shall be the national agency entitled to exercise the powers set forth in the foregoing section with respect to the archaeological heritage.

The protection of the paleontological heritage shall rest with the national agency to be set up pursuant to Section 55 herein.

It is the responsibility of these agencies to:

(a) Create and organize the National Registry of Archaeological Sites, Collections and Objects as well as the National Registry of Paleontological Sites, Collections and Remains with information gathered from local jurisdictions;

(b) Create a National Registry of First Offenders and Recidivists;

(c) Establish the relevant coordination and cooperation linkages with the provincial agencies having jurisdiction over the matter.

**SECTION 6** — The provincial governments and the government of the Autonomous City of Buenos Aires shall have the following exclusive powers:

(a) Providing for the creation of a competent agency to enforce the archaeological and paleontological heritage protection act or vest this power in an existing agency;

(b) Organizing their respective Registry of Archaeological Sites, Collections and Objects as well as their Registry of Paleontological Sites, Collections and Remains preferably using the method adopted by the enforcement agency in order to facilitate coordination at the national level;

(c) Creating a Registry of Offenders of archaeological and paleontological protection laws;

(d) Granting, through their relevant agencies, licenses for exploration and research;

(e) Adapting their legislation on licenses, violations and sanctions in order to centralize and provide said information to the requesting national or provincial agencies;

(f) Seeking to establish local offices within their jurisdictions to ensure a more effective enforcement of the provisions herein;

(g) Notifying the National Institute of Anthropology and Latin American Thought and the national competent agency with jurisdiction over paleontological heritage of any licenses granted, violations committed and sanctions imposed, in order to effectively centralize information;

(h) Notifying the national competent agency of any authorizations granted for the transfer of archaeological objects or collections and paleontological remains abroad for its awareness and adoption of the required measures in those cases where it has to arrange for their recovery and return to the country.

**SECTION 7** — The federal and provincial governments, together with the government of the Autonomous City of Buenos Aires, share the following concurrent power: implementing policies and measures aimed at harmonizing the legal framework and administrative organization throughout the country that, in the light of local peculiarities, will enable a more efficient protection of and research into the archaeological and paleontological heritage.

**SECTION 8** — Police power shall be exercised pursuant to the conferral of powers herein, and the federal government may exercise it concurrently with the provincial governments upon their request.

### **Ownership of archaeological and paleontological property**

**SECTION 9** — Archaeological and paleontological property belong to the federal, provincial or municipal government, according to their geographical location, pursuant to Sections 2339 and 2340 (9) of the Argentine Civil Code and to Article 121 and related articles of the Argentine Constitution.

**SECTION 10** — Archaeological and paleontological materials rightfully excavated or obtained by seizure shall be placed under the control of the federal, provincial or municipal government, as appropriate. The enforcing agencies are empowered to decide on their purpose and on the places meeting the organizational and safety standards required for the preservation of said materials.

### **Official Registry of Archaeological and Paleontological Sites**

**SECTION 11** — The owners of the estates where archaeological or paleontological sites are located, as well as any other persons who find such sites, shall notify the relevant agency for their registration.

**SECTION 12** — When a new archaeological or paleontological site is recorded in the relevant registry, the competent agency shall notify the owner of the estate where the site is located, whether such owner is a natural or legal person or a municipality. Registration shall in no way affect the property rights over the estate of the private owner or of the federal, provincial or municipal government.

**SECTION 13** — Any natural or legal persons excavating for building, agricultural, and industrial purposes or the like shall report to the relevant agency the finding of a site and of any archaeological object or paleontological remain during the excavation. They shall be responsible for the preservation thereof until the relevant agency becomes involved and takes control of such property.

**SECTION 14** — In the event that the relevant agency does not order the identification of the site nor takes control of such property within a period of 10 (ten) days following notification, the person or institution conducting the excavation shall issue a statement

identifying the site and deliver the finds. Upon meeting these requirements, such person's responsibility shall terminate.

**SECTION 15** — Immovable archaeological traces and paleontological remains that have been recorded and are located within private estates shall be subject to permanent surveillance by the relevant agency, which can inspect them whenever it may deem convenient. The owners of those estates or the persons responsible for them shall not obstruct such inspections.

### **Official Registry of Archaeological Objects or Collections or Paleontological Remains**

**SECTION 16** — All natural or legal persons in possession of archaeological objects or collections or paleontological remains of any material and quality before the date of promulgation hereof shall, within 90 (ninety) days of such date, report those objects, collections or remains to the relevant agency for their entry in the Official Registry, retaining possession thereof. Once this term expires, it shall be presumed that a person holding such archaeological or paleontological items came into their possession illegally, which will bring about their confiscation.

**SECTION 17** — The relevant agency shall make an inventory of the collections, objects and remains reported, indicating the holder's name and address, the place where they are stored, the nature and description of every item, together with any graphic and photographic documents for their identification.

**SECTION 18** — Archaeological objects or collections or paleontological remains recorded in the Official Registry may only be transferred by way of gift, bequest, device, or by donation to scientific institutions or to public national, provincial, municipal or university museums. All such transfers shall be reported to the relevant agency, within the period stated in Section 16, for their entry in the proper registry.

**SECTION 19** — The owners of archaeological objects or collections or paleontological remains recorded in the Official Registry shall not transfer such property for valuable consideration without first offering it, in a reliable and express way, to the federal or provincial government, as appropriate. Within 90 (ninety) days, the government shall issue a decision, either accepting the offer or ruling, through the relevant agency, on the fair price of the collection or object for its direct acquisition. Should the transferor disagree with said price and insisted on disposing of such property, then he/she shall file an action for the assessment of its price or for the settlement of the dispute. If the relevant agency does not issue a decision within 90 (ninety) days, or does so evidencing disinterest in the acquisition of said property, the transferor may freely dispose of it, but must notify of any such disposal for its entry in the Official Registry.

**SECTION 20** — Any transfer in violation of the provisions laid down in the foregoing section is null and void. The relevant agency has power to impose a fine on both transferor and transferee, who are jointly and severally liable, that will not exceed fifty percent (50%) of the property price, and to seize the archaeological or paleontological materials until the fine has been paid.

**SECTION 21** — The relevant agencies may temporarily place archaeological objects or paleontological remains under the custody of researchers or scientific institutions to facilitate their study. Authorizing agencies shall supervise and control the loan of such property, whether it is placed inside or outside its jurisdiction.

**SECTION 22** — Individual owners of registered archaeological objects or collections or paleontological remains shall allow access to such property, in the manner agreed upon with the relevant agency.

### **Licenses**

**SECTION 23** — In order to conduct exploration and research in archaeological or paleontological sites within the Argentine territory, a license shall be obtained from the relevant authority in the jurisdiction where the sites subject to exploration and research are located.

**SECTION 24** — Applications for licenses to conduct exploration and/or research in archaeological or paleontological sites shall meet at least the following essential requirements:

- (a) Name and address of the applicant —person(s) or research institution—, whether Argentine or foreign, with express reference to their scientific character and non-commercial purposes;
- (b) List of the participating scientists, who shall have the necessary skills to perform the relevant tasks;
- (c) List of the support staff or other persons involved, properly identified and with a background connected to the tasks they will carry out;
- (d) Topographical sketch or map setting the precise boundaries of the place or places where research will be conducted;
- (e) Purposes of the mission, scientific or cultural application, means or logistics to be employed;
- (f) Plan of action including methods to be applied and any other information for the relevant agency's prior assessment of their purposes and results;
- (g) Dates, stages or duration of the mission;
- (h) Further requirements which may aid scientific research following the mission.

Researchers submitting plans of action that have been approved by official scientific institutions or universities, whether national or provincial, are hereby exempted from meeting such requirements.

**SECTION 25** — Where the applicant is a foreign researcher or scientific institution, as a prerequisite they shall be working with an Argentine scientific institution or university run by the government and have been authorized by the federal government.

**SECTION 26** — Applications for research in private estates shall include the written consent of the estate owner or of the person with use and enjoyment rights over said estate, if the applicant can obtain it. Otherwise, before granting the license, the relevant agency shall seek their consent for the execution of the research works.

**SECTION 27** — The relevant agency shall decide on applications for licenses within 30 (thirty) running days. Licenses shall be granted for a maximum term of 3 (three) years and once such period has lapsed, a new application must be submitted. Where the relevant agency denies the license, the interested party may file an appeal against such decision with the administrative higher authority, whose decision shall be binding.

**SECTION 28** — Once a license has been granted to an individual or institution, no other license shall be granted for that sector, except where the licensee allows further research to be conducted simultaneously. The enforcement agency shall authorize interdisciplinary and joint projects and may establish regulatory exceptions.

**SECTION 29** — The owner of the estate, or the person with use and enjoyment rights over said estate, is entitled to demand written evidence of the license from the person or institution intending to conduct excavations in the area with movable or immovable archaeological traces or paleontological remains, or otherwise shall not allow said excavations.

**SECTION 30** — All the monuments, archaeological objects, and paleontological remains found in the course of the research project shall become the property of the national or provincial government or of the government of the Autonomous City of Buenos Aires, as appropriate. Licensees may obtain temporary custody of the objects so found for their study for a period not longer than 2 (two) years, but they shall indicate the place where the objects are kept.

**SECTION 31** — Individual or institutional licensees shall submit all the items and materials they remove to the relevant local agency for their inspection and registration. Likewise, within 1 (one) year as of completion of their research work, they shall submit a well documented scientific report with the results obtained through research and a copy of the subsequent publications. The agency in charge of enforcing paleontological protection regulations may modify the terms fixed in this section and in Section 30 according to how specific the subject is.

**SECTION 32** — The competent agency may appoint monitors to supervise research works and to ensure that all the necessary tasks are carried out systematically. The persons responsible for the scientific missions shall provide these monitors with all the information they may require, in compliance with this act.

**SECTION 33** — All decisions concerning licenses or measures to be taken shall be well-grounded, as well as those taken in the settlement of disputes or claims of estate owners. Such decisions shall be issued within 30 (thirty) days.

**SECTION 34** — Failure to comply with the obligations laid down in the foregoing sections shall be punished with a 6 (six)-month suspension of the license, at most, or with the expiry thereof.

## **Limits on private property ownership**

**SECTION 35** — Where archaeological or paleontological traces are located in private estates, the competent agency shall agree with the owners of such estates on all the necessary steps to facilitate the study and/or preservation of the site.

**SECTION 36** — The competent agency may, for reasons of public interest, provide for the temporary occupation of the private land where the archaeological property or paleontological remains are located. Such occupation shall be prescribed by law, except for cases of imminent danger, and cannot exceed 2 (two) years. The owner of the estate shall be entitled to fair compensation.

**SECTION 37** — Where the conservation of archaeological or paleontological property entails a permanent easement over the land where said property is located, the national or provincial government, each in their own jurisdiction, shall create such easement by special law and compensate the owners of the land.

## **Infringements and sanctions**

**SECTION 38** — Infringement of the provisions hereunder shall be punished as follows:

- (a) Warning;
- (b) Fine: It shall be set between ten per cent (10%) and up to three times the value of the property leading to infringement. In the implementing order to this act, the National Executive shall establish a monetary fine for those cases where it is impossible or very difficult to ascertain the value of the property. In order to set the amount of the fine, the seriousness of the infringement and whether the infringer is a recidivist shall be taken into account;
- (c) Confiscation of archaeological or paleontological materials and/or tools used to infringe;
- (d) Suspension or expiry of license;
- (e) Disqualification;
- (f) Temporary or definite closure.

**SECTION 39** — Any persons carrying out exploration, removal or excavation activities, whether *pro se* or through third parties, in archaeological or paleontological sites without applying for a license with the relevant agency shall be subject to fines, which shall be fixed in line with the alterations introduced and the confiscation of all the archaeological or paleontological items collected, even those in possession of third parties claiming to be bona fide purchasers. If on account of the damage caused the Nation's cultural heritage suffers irreparable harm, the relevant agency shall file a report against the infringers with a court of law, so that it determines whether they have committed the offense of damage to property (Sections 183 and 184 (5) of the Argentine Penal Code).

**SECTION 40** — All persons who, for any reason, find archaeological or paleontological materials by chance, whether on or below land or under water, shall report and deliver those materials immediately to the relevant agency or, failing this, to the closest police authorities, so that they notify the referred agency of this find. Failure to report the items and their concealment shall be punished by means of a warning, and in the infringer is a recidivist, by means of a fine. The materials found shall be confiscated in all cases.

**SECTION 41** — The persons who fail, within the terms laid down in Section 16, to register archaeological objects or collections and paleontological remains obtained prior to the promulgation of this act shall be subject to warnings and obliged to record such property in the Official Registry within 30 (thirty) days following notice. If this term expires and such obligation has not been met, the property shall be confiscated.

**SECTION 42** — Failure to comply with any of the requirements under the license shall be punished by means of a graded fine, according to the seriousness of the infringement. Where the licensee does not abide by the methodological and scientific standards agreed upon, or pursues objectives different from the ones set, the expiry of the license may be decided without the right to compensation. If it is also proved that the licensee has infringed the provisions hereunder and/or the requirements and conditions set forth in the clauses of the license agreement, the infringing researcher may also be punished with temporary or definite disqualification to obtain new licenses, together with the confiscation of archaeological and paleontological items found and the tools used in the research works.

**SECTION 43** — Any persons who, after the promulgation of this act, appropriate and/or trade in archaeological and/or paleontological objects and any persons receiving such items, despite allegations of good faith, shall be imposed a fine and such property shall be confiscated. In the event of sales conducted in commercial stores, temporary closure thereof shall be ordered, and definite closure shall apply for recidivists.

**SECTION 44** — Individuals and publicly or privately owned institutions that transfer or aid the transfer of archaeological and paleontological materials, for any purpose whatsoever, within the Argentine territory, but that have not been authorized to do so by the relevant local agency shall be imposed a fine.

**SECTION 45** — The National Institute of Anthropology and Latin American Thought, the relevant enforcing agency at the national level concerning paleontological property, and the relevant agencies to be determined at the provincial level shall be responsible for applying the sanctions that correspond to the infringements set forth hereunder.

### **Offenses and penalties**

**SECTION 46** — Any person carrying out, whether *pro se* or through third parties, exploration, removal or excavation activities in archaeological and paleontological sites shall be punished with a term of imprisonment or confinement ranging from 1 (one) month to 1 (one) year and with special disqualification of up to 3 (three) years.

**SECTION 47** — If during the performance of the activities described in the foregoing section, archaeological and paleontological objects are damaged and the Nation's

cultural heritage suffers irreparable harm, then the offense of damage to property shall be deemed committed, pursuant to Sections 183 and 184 of the Argentine Penal Code.

**SECTION 48** — Any person who transports, stores, purchases, sells, manufactures or anyhow places in regular trade items, products or by-products obtained from national or international archaeological and paleontological sites shall be punished with a term of imprisonment ranging from 2 (two) months to 2 (two) years and with special disqualification of up to 5 (five) years.

**SECTION 49** — Attempts to import into and export out of the Argentine territory any archaeological or paleontological items, products, or by-products, or archaeological or paleontological collections shall be punished with the penalties prescribed for smuggling, set forth in Section 863 and other related sections of the Argentine Customs Code.

### **Transfer of archaeological and paleontological objects**

**SECTION 50** — Archaeological objects and paleontological remains may be moved within the Argentine territory by obtaining authorization from the relevant local agency, on loan, for the purposes of their research and/or exhibition for the period that the relevant authority may set.

Interested parties shall inform of any measures to be adopted for the safeguard of said property and guarantee their restitution to their place of origin in the condition they were delivered.

**SECTION 51** — Removal of archaeological and paleontological property outside the Argentine territory may be effected by meeting the requirements set forth in the foregoing section and obtaining prior authorization from the relevant local agency, on loan for the purposes of its research or dissemination abroad.

### **Special protection of standard paleontological materials**

**SECTION 52** — The paleontological objects or remains defined in Section 2 herein that constitute standard materials cannot be transferred outside the Argentine territory for the purposes of exchange, barter or donation.

**SECTION 53** — Reproductions and artificial transfers obtained from archaeological and paleontological items may be the subject matter of sale or barter.

**SECTION 54** — The resources of the relevant national agencies shall consist of the following:

- (a) Amounts derived from budgetary allocations;
- (b) Proceeds, interest, earnings and rent derived from their heritage;
- (c) Inheritances, bequests, and donations by individuals;
- (d) Fees and rates for services rendered;

- (e) Subsidies or grants;
- (f) Sponsorship of private companies, government-run entities or non-governmental organizations;
- (g) Income derived from fines imposed for non-compliance with the provisions set forth in the relevant protection acts;
- (h) Any other income established by the National Executive.

### **Supplementary provisions**

**SECTION 55** — The enforcement agency concerning paleontological matters shall function within the scope of the Secretariat for Science and Technology.

**SECTION 56** — National universities and scientific institutions with a proven track record in archaeological and paleontological research shall agree with the enforcement agency hereunder on the functions for the protection and dissemination of knowledge on the archaeological and paleontological heritage. These agreements shall ensure the active participation of national universities and scientific institutions in the evaluation and management of licenses, the appointment of monitors, and the design, preservation and control of such heritage.

**SECTION 57** — All time periods hereunder shall be computed in working days. The National Executive shall pass an implementing order for the present act in a period not exceeding 120 (one hundred and twenty) days.

**SECTION 58** — Act No. 9080 and its implementing order, and any other provision contrary to this Act, are hereby repealed.

**SECTION 59** — Be it notified to the National Executive.

DONE IN THE CHAMBER OF THE ARGENTINE CONGRESS, IN BUENOS AIRES, ON THE FOURTH DAY OF JUNE OF TWO THOUSAND AND THREE.

—RECORDED UNDER No. 25743—

EDUARDO O. CAMAÑO. — JOSÉ L. GIOJA. — Eduardo D. Rollano. — Juan Estrada.

---

*Yo, María Marta Semberoiz, Traductora Pública, por la presente HAGO CONSTAR que la que antecede es traducción fiel y completa al inglés del documento en castellano que tengo ante mí y al cual me remito. EN FE DE LO CUAL estampo mi firma y sello en la ciudad de Buenos Aires, a los 27 días del mes de junio de 2007.-----*