

The Protection of Cultural Heritage by Legislative Methods in Hungary

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The Hungarian Parliament passed law LXIV of 2001 on the protection of cultural heritage in July 2001. This law treats elements of moveable and immovable cultural heritage – mostly the protection of monumental, archaeological and material cultural heritage – with a new, integrated approach, designating the task to a unified regional institution. The law is based on the modified texts of two decrees from 1997 (on the protection of cultural goods and on monument protection), supplemented by measures to ensure the effective and modern protection of archaeological heritage.

The legal regulation of this area has long traditions, since the first Hungarian law on monument protection was born **at the end of the nineteenth century** (1881¹), which already contained a few regulations on archaeological excavations. This nineteenth-century regulation gave a definition: “a monument is any building and its appurtenances above or below ground that have historical or artistic values” and established when excavations were necessary: “The minister of religion and public education decides individually in every case whether an excavation is necessary in order to discover monuments suspected below ground or to uncover monuments partly visible.” After World War II, a complex, modern regulation was prepared in **1949**, which gave the most important role to central state power, broadening the scope of the law to include moveable and immovable remains of “history, science and art,” that is, valuable objects in public and private collections, monuments and archaeological sites.² After this the legal (*Fig. 1*) and institutional (*Fig. 2*) backgrounds and practices separated. While monuments have been taken care of by various institutions under different ministries (Ministry of Housing and Construction, Ministry of Environmental Protection) since 1872, works of art and archaeological sites have principally belonged to museums, including the performance of supervisory authority tasks as well.

This situation was changed by the **1997 regulations**, which included a separate law on built heritage and monuments.³ The aim of the legislative preparations that lasted for years was to ensure that in archaeology professional and scientific work remains the task of museums and others institutions authorised to carry out excavations. At the same time, legislation raised certain processes – such as excavation permits, permissions and a new, central database of archaeological sites – to a central management level.

To carry out the above tasks, a central institution was established in course of a separate new law,⁴ which also had prevention tasks in connection with various developments and investments on protected sites. This new regulation was also necessary because of the new circumstances induced by the change of the political system: Ownership structures changed (private property became more significant), opportunities for state intervention were lowered, county museums became the properties of local governments, and the number of private investments greatly increased. All these factors implied that the frameworks and conditions of cultural heritage protection had to be strengthened and in some areas even reformulated, including the tasks of institutions, such as museums, involved in their preservation, maintenance, research and presentation.⁵

The background for this was provided by the relevant convention of the Council of Europe, the so-called La Valette Convention on the Protection of Archaeological Heritage, 1992, which was signed by Hungary in the same year. The principles of the convention have become essential parts of the Hungarian regulation. In the fourth chapter on Archaeological Heritage we read that this heritage is finite and increasingly vulnerable, it is an irreplaceable source of knowledge of our history and each non-professional intervention causes irreversible

¹ Law XXXIX of 1881 on the maintenance of monuments (For the text of the law, see Forster Gyula: A műemlékek védelme a magyar és a külföldi törvényhozásban 1906. 206–212.).

² Statutory rule 9 of 1949 on museums and monuments.

³ Law LIV of 1997 on monument protection.

⁴ Law CXL of 1997 on the protection of cultural goods, on museums, public libraries and public education.

⁵ Wollák Katalin – Zsidi Paula: Archaeological Heritage Management in Hungary / Wengry: zarzadzanie dziedzictwem archeologicznym Warszawa 1998. 308–312.

Legal regulations on	
Monuments	Cultural Goods / Archaeological Sites
1881, Act XXXIX on the Maintenance of Monuments	1911, bill = 1929, Act XI on Museums, Libraries and Archives
1949, Decree 9 on Museums and Monuments	
1964, Act III on Constructions	1963, Decree 9 on the Protection of Museum Assets
1967, Decree I.31 on the Protection of Monuments	1981, Decree 19 (amendment of the 1963 Decree)
1997, Act LIV on the Protection of Monuments	1997, Act CXL on the Protection of Cultural Assets
2001, Act LXIV on the Protection of Cultural Heritage	

Fig. 1.

1802	Establishment of Hungarian National Museum
1872	Temporary Committee for Hungarian Monuments
1881	National Committee for Monuments
	2nd half of 19th century – establishment of county museum associations and museums
1963	establishment of chain of county museums
1967	National Monument Conservancy (and Budapest Monument Conservancy)
1992	National Office for Monument Protection
1998	Cultural Heritage Directorate
2001	National Office of Cultural Heritage

Fig. 2.

damage, therefore “the elements of archaeological heritage should be kept at their original sites, in their original condition and original relations”, they “can only be moved in the framework of an archaeological excavation”, so that “all actions aimed at the protection of archaeological sites must be primarily of a preventative nature”. The law also declares that public and private development, especially the planning of area and settlement development, environmental, nature and landscape protection and related capital investments, must be completed in accordance with these protective measures, and that development activities and investments involving earthworks must avoid archaeological sites (as recorded by the Office).

The law introduces the ‘polluter pays’ principle, which is well-known from environmental protection and means that “the expenses of archaeological excavations must be covered by the party in whose interest the excavation became necessary”. For the implementation of this principle the law creates the category of preventive/investment-led archaeology, which has to be applied when the planned investment or development cannot be realised anywhere else. The law takes into account the principle of sustainable use as well, that archaeological sites can only be used to such an extent that their contents do not decrease significantly and the original relations are not significantly damaged. In case of an investment the total cost of the excavation, but at least 9 thousandths of the total investment cost must be made available to cover all excavation activity. This budget should also cover the costs of an archaeological impact study, trial excavation, documentation, primary find conservation, as well as the full cost of primary find processing and the extraordinary expenses of the placement of finds. All in all the legal framework of archaeological heritage management was established in Hungary. A further task was to provide actual contents, e.g. with the creation of the central, authentic and accessible registration and database of archaeological sites.

The legislation following the above principles was incorporated without major changes into the **2001** law that is currently in force, which, among other things, articulated the complete separation of professional and administrative work that had commenced earlier.⁶ The law reinforced the state ownership of finds from above ground and below ground and water, the prohibition of their export and the rule that such finds are non-negotiable. This strict regulation did not present a problem even after EU accession, since the European Union has no regulations on

⁶ Law LXIV of 2001 on the protection of cultural heritage.

culture; archaeological finds are dealt with only by a decree⁷ and a directive.⁸ The decree concerns a special group of goods, the export and import of cultural goods; the directive describes the principles of how to return illegally exported goods to the member states. Since the EU requires an export permission for archaeological finds, such finds cannot leave the country legally with or without a permission.

The law gives the definition of **archaeological heritage**: all detectable signs of human life originating before 1711 above ground, below ground or water and in natural or artificial cavities which help to reconstruct the history of humankind and its relationship with the environment. The legislation also introduces a new notion: areas with **archaeological interest**/archaeologically sensitive areas. These are territories where – due to the geophysical or geomorphologic conditions – archaeological remains might be found or assumed to exist. The law states that archaeological **excavations** (using both destructive or non-destructive methods) can be done only with a licence, therefore all types of archaeological research are subject to the licensing system: site surveys, excavations, certifying and trial excavations, advance excavations, rescue excavations and all types of instrumental find and site detections – including aerial photography, field walk, prospection and the use of metal detectors.

The lower-level decree on the implementation of the law declares that only **responsible** organisations, such as county and national museums with an archaeological competence, archaeological departments at universities, the Institute of Archaeology of the Hungarian Academy of Sciences and national heritage organisations have the right to conduct excavations. (*Fig. 3*) The leader of the excavation can only be an archaeologist with a professional degree who has a contract with one of the above organisations. This means that the legal system does not allow either commercial or amateur archaeology. The basis for **quality control** is embedded partly in the mentioned legal tools, which formulate the requirements in archiving and storing the materials of the archaeological investigations and also the obligation on reporting any archaeological activity. There are fewer prescriptions on scientific evaluation, therefore we face a situation similar to other countries in Europe: huge amounts of unprocessed material gather because of the enormous number of investment-led excavations.

In the **licensing system** a scientific body, the so-called Excavation Committee, plays a definitive role. It supervises the applying persons and institutions, the quality of excavation activities, the contents of the documentation (archiving the data) and the status of the remains in order to promote better practice in preserving archaeological heritage. The Committee is a professional body that consists of nine members. The Hungarian Academy of Sciences and the universities that have a department of archaeology delegate two members each; four members are delegated by the national and county museums and one, by the Ministry of Environment.

The licensing system is an important tool in avoiding illegal excavations, however, certain further measures help protection, among which **registration** is the most essential. The law declares *ex lege* protection, which means each known site is protected by the force of law. This protection comes into existence by registration; registered

ARCHAEOLOGICAL INSTITUTIONS

NATIONAL MUSEUMS	MUNICIPAL MUSEUMS	OTHER INSTITUTIONS
Hungarian National Museum ® © - affiliated institutions: Esztergom ® ©, Sárospatak ® ©, Visegrád ® ©	BUDAPEST: Budapest Historical Museum ® ©	UNIVERSITIES: - Eötvös Lóránd University, Budapest ® - József Attila University, Szeged ® - Janus Pannonius University, Pécs ® - University of Miskolc ®
Museum of Fine Arts ® © (non-Hungarian material)	REGIONAL: 19 Museum Directorates (County-based): - 18 county museums with area of archaeological collection ® © - museums affiliated with the directorates ® © - museums maintained by town councils ® © - galleries ® ©	RESEARCH INSTITUTIONS: Archaeological Institute of the Hungarian Academy of Sciences (Archeosztráda) ®
Archaeological Museum ® ©		HERITAGE INSTITUTIONS: - Office of Cultural Heritage ® - ÁMRK ®

® = right to carry out archaeological excavations

© = individual collections

Fig. 3.

⁷ The Council's 3911/92/EEC decree of 9 December 1992 on the export of cultural goods.

⁸ The Council's 93/7/EEC directive (15 March 1993) on the return of cultural goods that were illegally exported from the territories of member states.

sites are the subjects of administrative processes. The creation of central and authentic registration began at the end of the 1990s. Presently the National Office of Cultural Heritage – as the caretaker of registration - keeps the records of more than 50,000 sites. (Fig. 4) The basis for this collection was the various professional databases: the central archaeological archive kept by the Hungarian National Museum, the archives of the Archaeological Institute of the Hungarian Academy of Sciences (HAS) and the county/Budapest museums. In addition to textual data and geographic information, more than 12,000 sites are available by GIS application in the database. (Fig. 5) The system functions via intranet, the general public can get information from the website of the office⁹ with the help of a simple search engine, whose test version is already available.

Registration has to fulfil legal, professional and administrative requirements, and it also has to satisfy the demands of clients. Among the registered sites, fewer than 1000 are scheduled: the most outstanding sites with high historic value achieving this status since 1949. Most of these special protected areas are medieval sites. (Fig. 6) Some of them are open air sites in archaeological parks and at national memorial places; a few sites – for example earthworks, tumuli, fortifications and caves¹⁰ – are also valuable from an environmental point of view, and are protected by the law on nature conservation.¹¹ It is presumed that the number of archaeological sites in Hungary is between 100,000 – 150,000.

DATABASE OF ARCHAEOLOGICAL SITES OF HUNGARY

The screenshot displays the 'KÖI Informatikai Rendszer v1.1' application window. The main area is titled 'Lelőhelyek' and shows the data entry form for site number 4607. The form includes the following fields and sections:

- Lelőhely:** 4607
- Helység:** Gyomaendrőd
- Lelőhely száma:** 306
- Megye:** Békés
- Név:** Kápolna-halom
- Jelentősége:** Általános
- Azonosítatlan leelőhely száma:** 0
- Kapcsolat:** Adatok, Nevek
- Szakanyag:** Felvevő
- Ügyirat:** Történet
- Dokumentum:** Jelenség
- Kiegészítés:** Tevékenység, Lelet, Helyrajzi szám
- Térkép:**
 - Vetület: EOV
 - TI szám: 48-312
 - TSZF: méter
 - X (É-D): 174161
 - Y (K-NY): 778422
 - Helymeghatározás pontosság: méter
- Méret, irány, terület:**
 - Hosszúság: méter
 - Szélesség: méter
 - Írány: °
 - Összet.: nm
- Állapot:**
 - Ismeretlen
 - Bolygatott
 - Elfedett
 - Elpusztult
 - Bolygatatlan
 - Feltárt
 - Részben feltárt
 - Részben elpusztult
- Veszély:**
 - Nem veszélyeztetett
 - Erózió
 - Szél
 - Növényzet
 - Bolygatás
 - Kő-, földkitermelés
 - Víz
 - Fagy
 - Kincskeresés, rablás
 - Talajművelés
 - Elledés
 - Építkezés
- Egyéb:** (Two empty text boxes)

The bottom status bar shows: Adatbázis: KOI_SQL, Felhasználó: RITA, Belépés ideje: 2002. 02. 13. 10:04:46.

Fig. 4.

⁹ www.koh.hu

¹⁰ Wollák Katalin: Helyzetkép védett régészeti lelőhelyeinkről in Műemlékvédelem XLV. évf. 2001. 6. sz. 342–349.

¹¹ Law LIII of 1996 on the protection of nature.

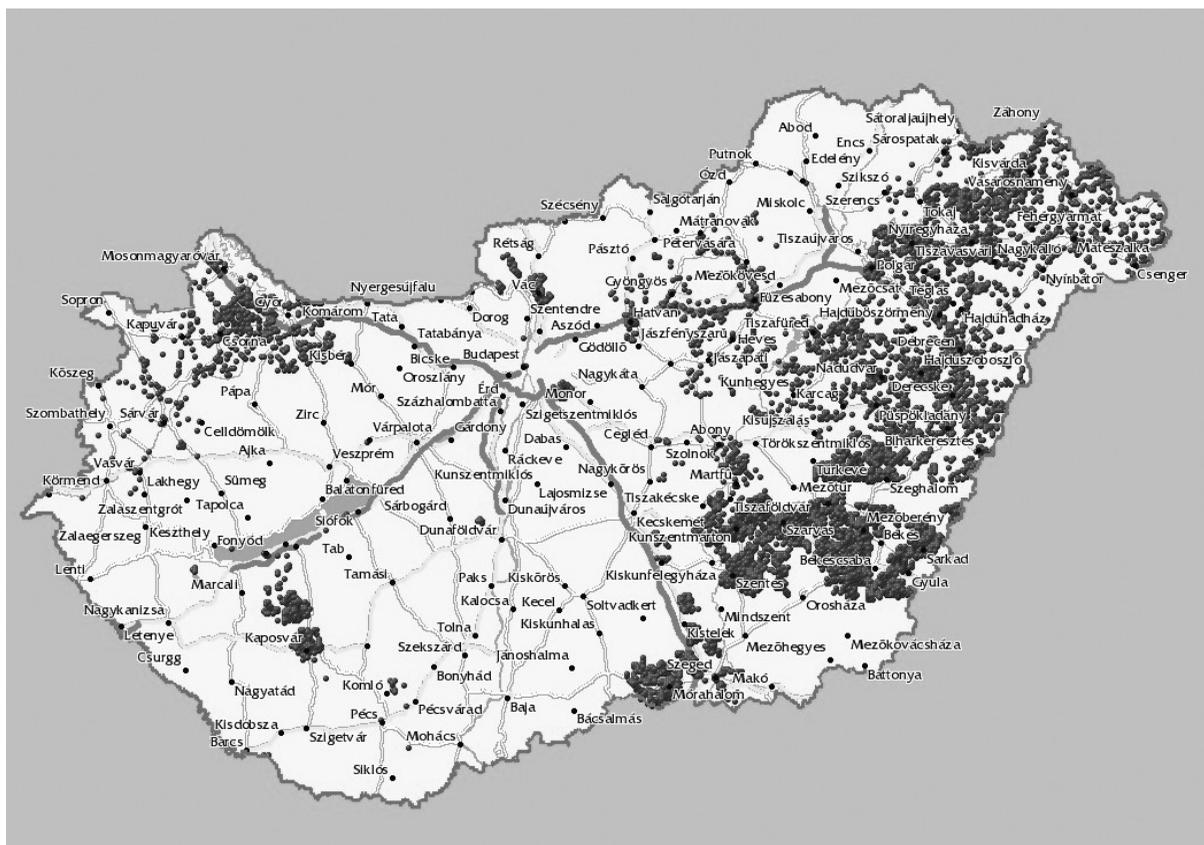


Fig. 5.

THE DISTRIBUTION OF THE NATIONALLY SCHEDULED / PROTECTED SITES IN THE 19 COUNTIES OF HUNGARY

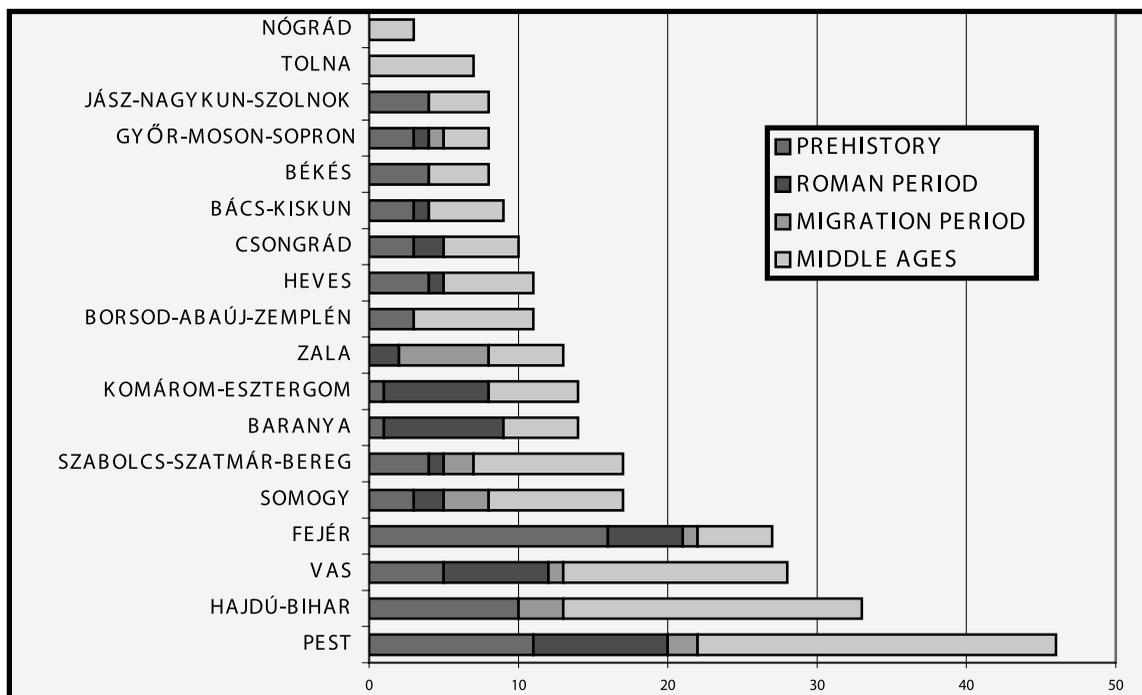


Fig. 6.

To estimate the **number** of the archaeological sites in Hungary we can start from the published volumes of Archaeological Topography of Hungary – a large-scale project of the HAS that began in the 1960s. In the available 10 volumes (1966–1998) the territories of 396 settlements (from among the nearly 3200 settlements that presently exist in the country) have been surveyed – by applying various identification methods, including field survey – on altogether 10,950 km². The result was the identification of 9952 archaeological sites on the territory of four counties. (*Fig. 7*) Making a rough calculation on the basis of this work, which covers more than 1/10 (11,7%) of the territory of Hungary, it can be argued that there are at least one hundred thousand sites in the country. There are some phenomena that suggest that this estimated number could increase significantly. For example, at the motorway rescue excavations since the 1990s, archaeological sites were found every 1–1.5 km, and in some places, such as previous riversides, this number was even higher. We should also consider the fact that the number of sites (500) published in the first volume of the Archaeological Topography increased by 20% in later volumes.

There are some initiatives to open up towards a **wider context** than the perception of single sites. Such initiatives are for example the designation of areas with archaeological interest, archaeological protective zones (the environment of a protected site, ensuring its sustainability, accessibility and landscape protection) and the possibility to define historic areas (cultural landscapes). However, these effort are only in an initial phase.

The 2001 law charged the National Office of Cultural Heritage with performing the above tasks. The Office was created by merging the Cultural Heritage Directorate (established in 1998) and the institution responsible for monument protection that had existed for 130 years.¹² The Office keeps the authentic central records of archaeological sites, registers archaeological excavations, issues excavation permits based on the professional recommendations of the Excavation Committee (including sanctioning agreements between investors and excavating institutions in the case of rescue excavations), prepares the protection of archaeological sites of special significance for the minister of culture, who then declares their protected status identifying the regulations concerning the sustainable use of heritage elements. Since 2001, 103 areas have been given special and strict protection in 14 decrees of the minister.

ARCAEOLOGICAL TOPOGRAPHY OF HUNGARY the 10 volumes on the 4 elaborated counties

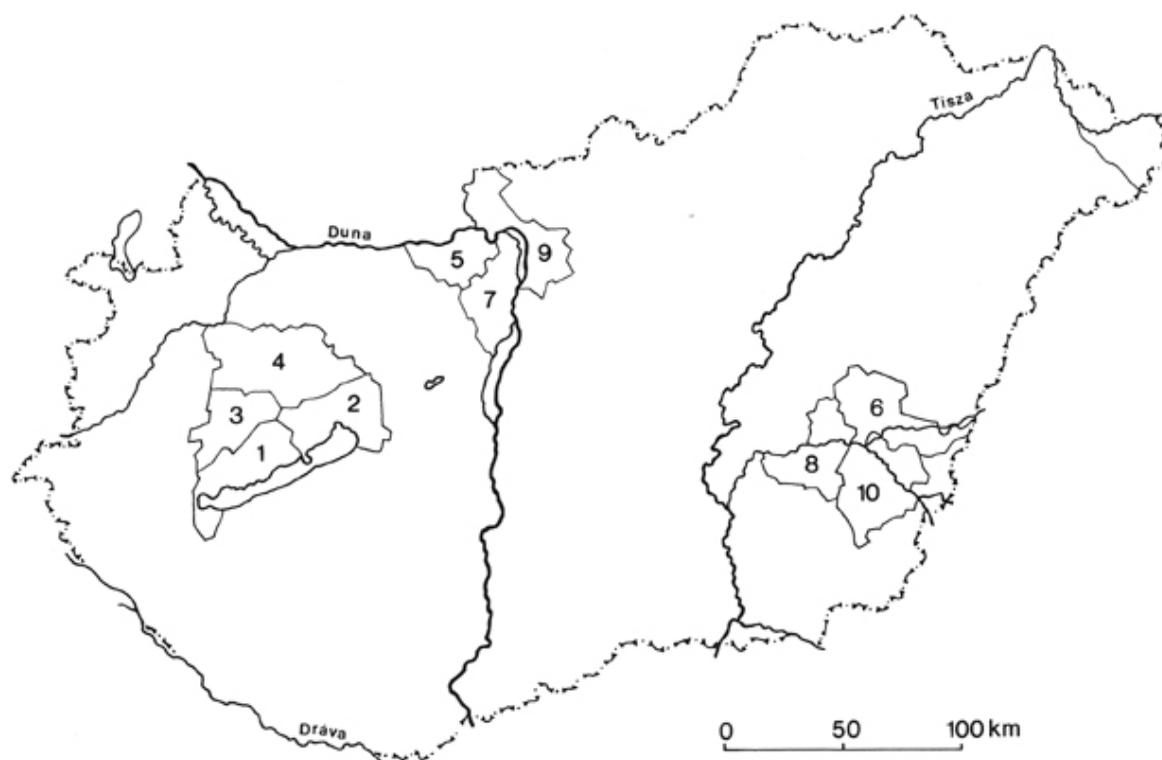


Fig. 7.

¹² Wollák Katalin – Zsidi Paula: A régészeti örökség védelmének jogi háttere és fővárosi gyakorlata in Vándorutak – Múzeumi örökség. Tanulmányok Bodó Sándor tiszteletére, 60. születésnapja alkalmából. Szerk.: Viga Gyula, Holló Szilvia Andrea, Cs. Schwalm Edit. Bp., 2003. Archaeolingua Kiadó. 241–255.

Administrative work in heritage protection is undertaken in nine regional offices. An important part of this work is supervision, which means that archaeological supervisors oversee archaeological sites and ongoing excavations. They also take care of the post-excavation protection of uncovered remains. This is especially necessary, since sites continuously degrade, aptly proven by Százhalombatta, the venue of the present conference. In the middle of the nineteenth century, the first surveys registered 122 burial mounds in the area that gave its name to the settlement, while today we can only see a few dozen of them. (Figs. 8–10)

The Office can initiate the state expropriation or pre-emption of strictly protected and endangered archaeological sites, however, there are very limited central funds available for this purpose. The list of nearly 270 monuments that cannot be taken out of state property is attached to the law on heritage protection, however, approximately one fifth of these are archaeological ruins. There is a small fund to support the owners of strictly protected archaeological areas, for example to help with changing the type of cultivation or to withdraw an area from production, however, the budget available has been shrinking for years. The regional offices are the main locations for keeping contacts with professional institutions,¹³ mostly museums. In addition to this, the Office provides information and issues professional publications for the wider public, such as the leaflets aimed at property owners entitled “The Protection of Our Archaeological Heritage – What Should I Do, What Can I Do” or “Archaeological Research in Hungary,” a yearly publication that contains short reports and articles about research in the given year.

Since many, so far little researched archaeological sites – mounds, earthworks, fortifications, ditches, caves, other visible surface features and sites known from aerial photographs – are in protected natural areas, the co-operation between cultural heritage and nature protection has recently strengthened. Joint actions have been made easier through the 2005 modification of the law on heritage protection,¹⁴ which allows nature protection rangers to take part in the physical protection of archaeological sites.

The National Office of Cultural Heritage has an important role in planning processes. The Construction Act of 1997 states that the regulation plan of each settlement should have a section elaborating the protection of historical

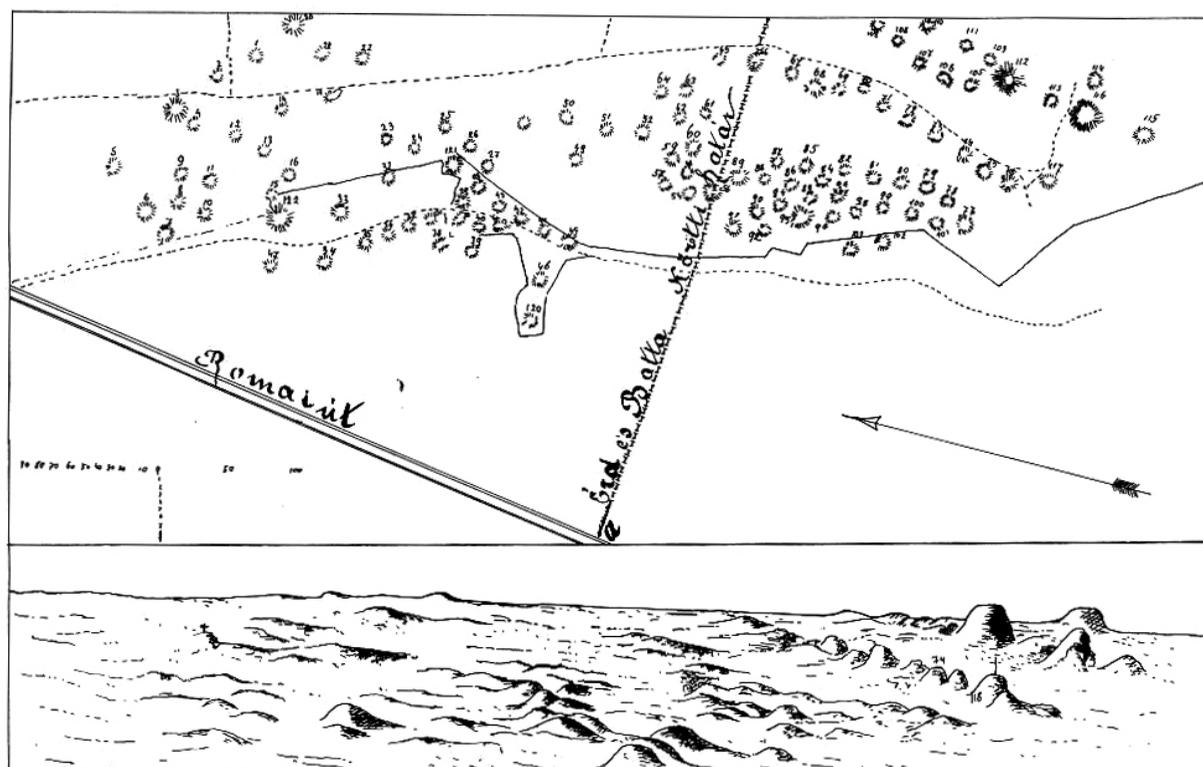
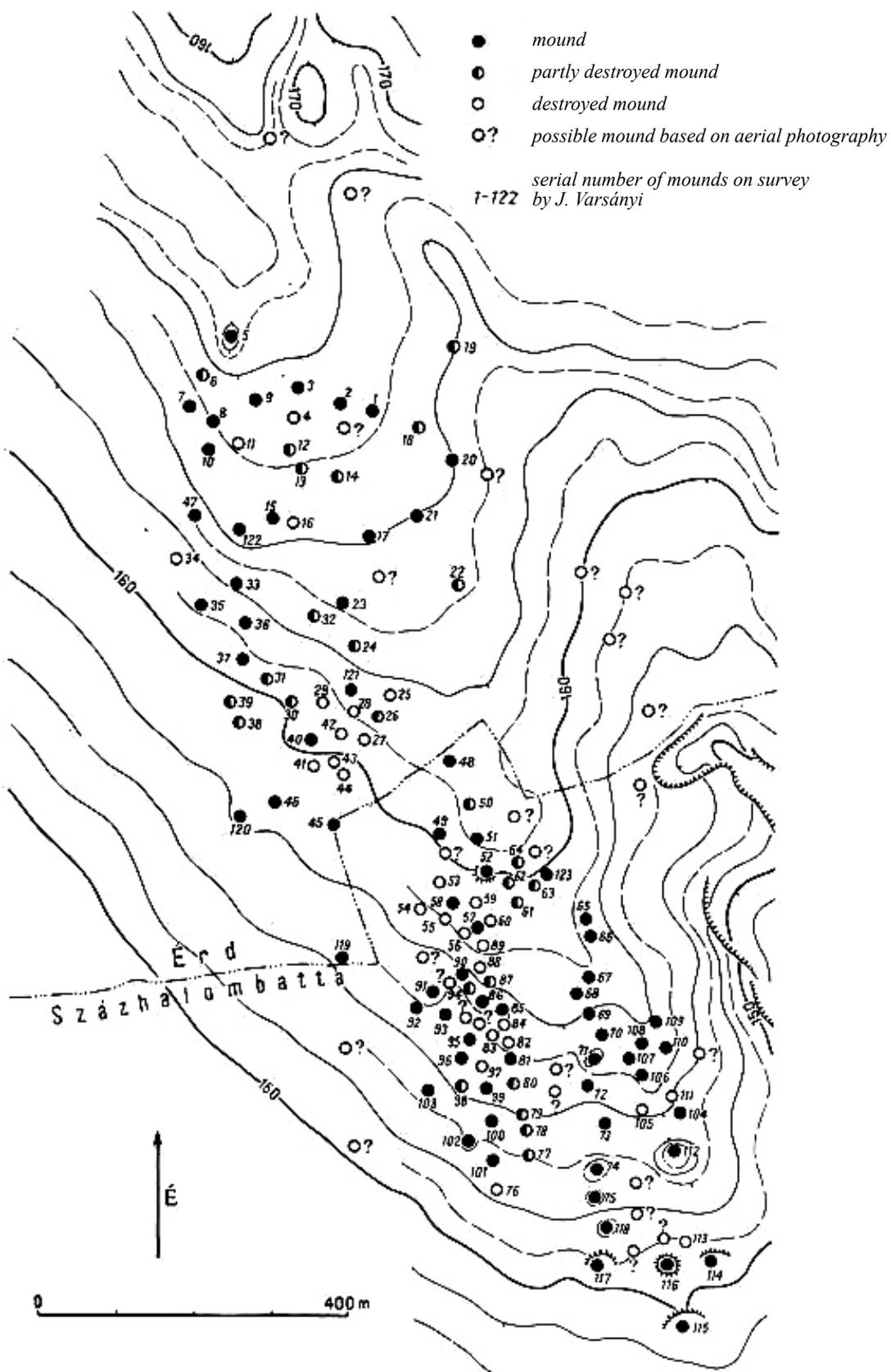


Fig. 8. Luczenbacher János: *A pogány magyar sírok körül tett felfedezések (Discoveries around pagan Hungarian graves)* *A Magyar Tudományos Akadémia Értesítője* 7. (1847) 282–289. (Varsányi-féle felmérés). (Surveyed by Varsányi)

¹³ Wollák Katalin – Zsidi Paula: A régészeti örökség védelmének jogi háttere és fővárosi gyakorlata in *Vándorutak – Múzeumi örökség. Tanulmányok Bodó Sándor tiszteletére*, 60. születésnapja alkalmából. Szerk.: Viga Gyula, Holló Szilvia Andrea, Cs. Schwalm Edit. Bp., 2003. Archaeolingua Kiadó. 241–255.

¹⁴ Law LXXXIX of 2005 on the modification of law LXIV of 2001 on the protection of cultural heritage.



Százhalombatta, site 27/1. Early Iron Age burial mounds. Survey by János Varsányi, compared to aerial photographs and reexamined on site by István Torma and Dénes Virágh. *The Archaeological Topography of Hungary*. Vol. 7. 1986 Százhalombatta, entry 27/1.



Fig. 10. Százhalombatta, Százhalombatta – Százhalom, 1 April 2002, photo by Zoltán Czajlik.

values on local, regional and national levels (including the scheduled/listed unique buildings, other edifices, their environment and the protected rural/urban historical/archaeological areas. The office has the right and duty to express opinion on the regulation plans, the deadline for the preparation of modified regulation plans of settlements is 31 December, 2007.

Examining the relevant parts of these assessments it was observable that the elements of archaeological heritage have not been elaborated in a satisfactory manner, therefore the necessary measures for sustainable management have not been implemented in these regulation plans. Similar deficiencies can be observed in Environmental Impact Studies/Assessments. Although the legal framework should ensure the proper involvement of the necessary information on archaeological heritage, these measures seem not to be satisfactory

Heritage organisations can most effectively represent the interest of archaeological heritage management through the administrative licensing process of different developments. The competent licensing authorities have to procure the professional statement of the statutory archaeological authority and their prescriptions will become part of the relevant licence, so in construction projects – be it any type of building/edifice, pipeline (gas, electricity, telecommunication), road/railway construction, mining activity/mineral extraction, water supply – the licences contain certain provisions as to how the sites should be managed from the strictest objection (the investment must not be realised at a certain site) through archaeological mitigation to simple monitoring/observation.

In 2003, a new preventive tool for the better recognition, adaptation and management of heritage values (Heritage Impact Study/Assessment – HIA) was introduced into the legislation. It is obligatory to prepare an HIA for the regulation process (including settlement development concepts, settlement development plans, local construction regulations and regulatory plans). The Office – in the above cases – can prescribe an HIA as a precondition of its expert opinion given to certain investment and developments. The HIA has to advert those arrangements which are able to ensure the documentation and archiving of the changes and interventions, the improvement of the maintenance of the cultural heritage elements. It also has to mitigate damaging factors, promote the preservation of the role of cultural heritage in the given social, cultural or ecclesiastic community. The HIA should contain

- a description of the cultural/archaeological heritage elements, referring to their condition
- an outline of the direction of the changes
- an impact analysis

- a summary (essence of changes, predictable alteration in conditions, introduction of impact areas, evaluation of the impacts on cultural/archaeological heritage, changes in quality and way of life of the related community, the protective or modifying interventions proposed also in a visual form if necessary)

In recent years several HIAs have been prepared. The advantages of these studies are multifunctional: they resulted in detailed professional analyses of known archaeological sites and gave the opportunity to certify the archaeological evidence presumed – to prepare the archaeological mapping of a given territory. They also helped the investors to bring reasonable decisions about the realisation of the planned projects at a certain site.

Heritage legislation contains another new measure: heritage protection fines. These are levied after an illegal event takes place, however they can restrain people and institutions from destroying or damaging items of cultural heritage. The implementation of this measure was necessary because although the Criminal Code¹⁵ was modified in 1997 creating a possibility for sanctioning those who damage archaeological sites, in reality it became evident that these elements of the regulation were not sufficient. Although the Code introduced a new criminal state of affairs, impairment, the most serious punishment – in case of demolition – can amount to one to five years, however, the proving process, therefore application are very difficult. This new administrative tool was introduced so that it could be applied in the case of endangering archaeological heritage as well.

The new regulation has created the opportunity for the means of archaeological heritage protection to strengthen and become a decisive element in planning and development processes. Archaeological sites need to be considered already in regulation plans, and with the help of HIAs the archaeological value of a particular area where a larger development is planned can be established. In the case of particular investments, the requirement that highly significant sites should be avoided can be formulated through administrative processes. It is also possible to establish the methods of necessary rescue excavations as well as the conditions for storing the finds, thus creating a clearer and more effective system of archaeological heritage protection. An important element in this is that by creating various forms and levels of access, the Office provides relevant information about protected and listed sites for local residents, interested parties, local governments, planners, developers, investors, and decision makers, considering the possibilities of incorporating into education. Even the strictest protection is inadequate if the local community does not identify with its historical and archaeological values and does not try to preserve them. Therefore a long-term heritage protection policy must include the raising of public awareness as well as the creation of a legal and institutional background.

¹⁵ Law IV of 1978 on the Criminal Code.