

The Development of Law on Tangible Cultural Heritage: Case of the Law on Ancient Monuments, Antiques, Objects of Art and National Museums

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Historical research depends in part on antiques, objects of art, and ancient monuments. Without them, it will be difficult to trace the history of the nation and its people. Hence, the preservation of such articles is imperative for all. On the occasion of the official opening of the Sam Phraya National Museum in Ayutthaya on 26 December 1961, His Majesty King Bhumibol spoke on the importance of conserving national heritage as follows:

Antiques, objects of art and monuments are all things of value and necessary for study and research in history, art, and archaeology. They are evidence of the flourishing of the nation in its passage from the past, and should be preserved as the common property of the nation forever. It is said that there are now many people interested in buying antiques and art objects for export to foreign countries. If in future we have to go to study or view our own Thai antiques and objects of art in foreign countries, it would be pitiful and very shameful. Hence, it would be best to make every effort and work together to find ways to collect our antiques and objects of art and create national museums to preserve them.

In the same year, His Majesty said:

Constructing a building these days is a matter of pride for the builder alone but monuments are the pride of the country. A single ancient brick has a value that deserves preservation. If we had no Sukhothai, Ayutthaya, or Bangkok, Thailand would have no meaning.

Ancient monuments, antiques, and objects of art are cultural property or cultural heritage that attests to the creativity and wisdom of our ancestors. They are historical sources that both show and shape the national identity with implications

for national security, as shown in the statements “Preserving culture is preserving the nation” and “Culture is the security of the nation”.

Early history

There are written sources from ancient times that show interest in preservation, particularly of religious monuments. In the *Three Seals Law*, a collection of laws from the Ayutthaya period (1350–1767) assembled in the Bangkok First Reign, two relevant clauses of the law on theft state as follows:

Clause 47. Anyone who dishonestly and sinfully steals a Buddha image or articles of gold, *nāḱ* [pink gold], silver, crystal, bronze, copper or tin, or any other religious image, and either takes it for sale or damages it or intends to do so, and is arrested anywhere, detain and interrogate to discover associates in the sale, and if the thief’s testimony is true, punish the associates with 60 lashes, severing of the hand, and fine of 700,000 cowrie shells, and for the merit of the Buddha image execute the thief to cleanse the sin.

Clause 52. Any criminal who loots a monks’ quarters or sala shall be detained, punished with 30 or 60 lashes, and returned to the master. Anyone who digs under a Buddha image, stupa, or preaching hall for loot shall be punished in three ways, 1. execution; 2. severing of fingers; or 3. sixty lashes.

As can be seen, the law concentrated on protecting religious sites and objects by threatening severe punishments. But the *Three Seals Law* has no provisions on the protection and conservation of ancient monuments and antiques.

A law dating from the reign of King Mongkut (Rama IV, r. 1851–1868) states that in the case of looting or damage at a preaching hall, stupa, ordination hall, or Buddha image in the capital, those living in a radius of 4 *sen* (160 metres) must report the matter to the district officer within a month, or be liable to pay for the repairs when the damage is discovered. The preamble explains that the law aims to make people take an interest in preserving their local *wat* (temple) as, however big or small, and however dilapidated, it was built by their ancestors and is an ornament of the city.

Following this law early in the Bangkok period (1782 to present), there is no trace of other legislation in this area until a royal decree issued by King Rama VI (Vajiravudh, r. 1910 – 1925) on 17 January 1923, as follows:

In Siam there are many ancient things such as stupas and various artefacts created by kings and expert artists in the past. Such things are evidence for the chronicles and tools for investigating knowledge of the past for the benefit and

glory of the country. For this reason, civilised countries consider it a duty of government to investigate and conserve ancient articles within their country. In the Kingdom of Siam, there are such ancient articles that are adequately taken care of by officials, but others that are abandoned with nobody looking after them, and others that deserve to be investigated but have not yet been given attention because there are no officials in government to monitor and conserve ancient things systematically.

This decree placed the Committee of the Vajirayana Library of the Capital¹ in charge of conservation, with responsibilities to: 1. inspect and identify monuments; 2. devise methods for monitoring and conservation; 3. provide advice to implementing officials, and make proposals to government agencies and others; and 4. report to the king at least once a year.

This decree was the first step in establishing a system for managing national heritage.

First legislation on museums and export

Three years after the above decree on 5 March 1926, King Prajadhipok commanded the drafting of legislation to establish a National Museum in the capital, with provision for extension to further national museums in the provinces under the same legislation. However, two months later the government faced a financial crisis because government revenue was insufficient to cover its expenses, and the Fine Arts Department was abolished.

As the Committee of the Vajirayana Library of the Capital had taken on new duties, its name was no longer considered appropriate. Hence, a decree of 25 April 1926 changed its name into the Ratchabanditsapha, known in English as the Royal Institute of Art, Literature, and Archaeology. The Thai name came from an old department (Krom Ratchabandit) which had originally had responsibility for military lore but whose duties had shrunk with the passage of time to looking after Buddhist texts and ceremonies. This new Royal Institute had three departments: a department of literature, which looked after the Vajirayana Library; a department of history, which oversaw museums and ancient monuments; and a department of arts which took care of arts and crafts.

Later in 1926, the army vacated the premises of the old Front Palace which was then occupied by the new National Museum.

On 25 October 1926, in the reign of King Rama VII, the first law on the export of antiques and objects of art came into force. The preamble stated that in advanced countries government had responsibility to conserve antiques and objects of art for

¹ Originally a library founded within the Royal Palace that gradually evolved into the National Library.

the benefit and education of the people. While the Government of Siam had now started a museum, people were exporting valuable articles.

This was the first law to define terms for antiques and objects of art, as follows:

Antique means any ancient moveable article, whether originating in this country or elsewhere, which has value for knowledge or for studying the chronicles and archaeology..

Object of art means a rare article created by craftsmen of special skill.

The Act banned export of antiques and objects of art without permission from the Royal Institute, and imposed penalties of imprisonment up to three months or a fine up to 3,000 baht, or both. The Act set out procedures for applying for permission to export, including presenting the article for inspection, authorised the search of vehicles, and empowered the court to seize articles without compensation

The Act of 1934

In 1933, the Royal Institute of Art, Literature, and Archaeology was divided into two bodies, the Royal Institute and a resurrected Fine Arts Department (FAD).

The first comprehensive Act on Ancient Monuments, Objects of Art, Antiques, and National Museums was approved in 1934 and came into operation in the following year. This Act replaced all the legislation described above, and introduced new definitions of antique, ancient monument, object of art, and museum. An ancient monument was defined as “an ancient immovable property, or a fragment of such, which by virtue of age or style of construction or available historical facts is of utility for history, archaeology or art.”

The Act commanded the director-general of the FAD to draw up a register of ancient monuments, including Buddhist *wat* (temples) and other religious buildings, both those that had owners and those that were ownerless. The director-general had to inform owners in writing, and if the owner objected to the registration then the matter would be adjudicated by the minister. Once a monument was entered on the register, it could not be transferred, repaired, modified, altered, or destroyed without written permission from the director-general, and then within conditions imposed by the director-general.

The Act also made owners, both public and private, responsible for taking care of the monuments within regulations. Monuments under the charge of other government departments were to be transferred to the FAD, which was also authorised to purchase monuments or acquire them through the law on forcible purchase for purposes of conservation or making them available for public view.

With respect to antiques and objects of art, a process similar to that for

monuments was introduced for inscribing them on a register. Those with no owner were deemed property of the realm and the director-general was authorised to place them in national museums located around the country. Articles which were dug up or otherwise found on private land during archaeological work at public expense were also deemed property of the realm. The export of antiques and objects of art, whether registered or not, was forbidden, and the director-general was authorised to purchase or forcibly purchase articles in cases where there was reason to suspect the articles might be lost through sale or export. Owners could apply for permission to export articles on a temporary basis on payment of a surety.

With respect to museums, the Act classified articles in museums into three types: property of the realm, loans, and articles placed in the care of the museum. Sale of articles in museums was forbidden except in cases where the museum had many similar articles or the article was considered of low value. Such sales required approval by the minister.

The director-general was authorised to transfer articles between national museums, to purchase objects within an approved budget, to accept objects as gifts or legacies, and to accept monetary gifts to be placed in a central fund for the development of national museums, disbursed at the director-general’s discretion with the approval of the minister. The Act also allowed the director-general to grant monetary rewards from the central fund to people who provided information on monuments or antiques which appeared to be ownerless.

As to penalties, those who damaged, destroyed, or modified monuments, antiques, or art objects were liable to imprisonment up to six months or fine up to 1,000 baht, or both. Those who exported objects or had them exported, or exported in breach of conditions imposed, were liable to imprisonment up to three months or fine up to 1,000 baht, or both.

An amending Act was passed in 1943. Primarily, this removed the requirement for the director-general to gain approval from the minister for the movement of objects between national museums, for disbursements from the central fund, and for the payment of rewards.

The Act of 1961

The Act that remains in force until today was passed in 1961. Although the new legislation made many changes of detail and definition, the scope and approach of the Act closely follow the Act of 1934. One major change concerned the definition of monuments.

In 1951, the FAD proposed a new draft to replace the Acts of 1934 and 1943 on the grounds that the legislation was difficult to implement because the registration of monuments did not specify the boundaries of the monument, only its name and location (e.g., “Nakhon Pathom Province: Base of a stupa, Thammasala Village,

Mueang District”). There were cases where looters dug tunnels under monuments but did not touch, damage, or affect the monument in any way, and the public prosecutor declined to process the case on grounds the legislation did not define the area of the monuments.

In the new Act of 1961, the registration of ancient monuments required a plan of the monument indicating its boundaries. In addition, this Act revised its key definitions to be stricter as follows:

Ancient Monument means an immovable property which, by its age or archaeological characteristics or historical evidence, is useful in the field of art, history or archaeology.

Antique means an archaic moveable property, whether produced by man or by nature, or being any part of an ancient monuments or of human skeleton or animal carcass which, by its age or characteristics of production or historical evidence, is useful in the field of art, history or archaeology.

Object of Art means a thing produced by craftsmanship which is appreciated as being valuable in the field of art.

The Act increased the severity of penalties. For example, as there had been many cases of looting monuments, the Act increased the penalty for modifying or damaging a monument from imprisonment up to six months or a fine of up to 3,000 baht to become imprisonment up to five years and fines up to 10,000 baht.

The Act was slightly amended by two Decrees of the Revolutionary Council (the government of Thanom Kittikachorn), No. 308 dated 11 December 1971 and No. 189 dated 23 July 1972.

There had been a spate of looting monuments in Udon Thani and Sakon Nakhon, which threatened to spread to other provinces. The looters had often severely damaged evidence of early history.

One provision of Decree No. 189 authorised the director-general to issue a written notice to owners of antiques or art objects of historical or archaeological value to hand over these objects at a designated place and within a designated time, without compensation, and on pain of imprisonment up to six months and fine up to a thousand baht, or both.

In addition, the director-general or a designated official was authorised to enter and inspect places suspected of storing objects that had not been declared or had not been handed over on request, with power to seize the said objects.

An Act was passed in 1992 to amend several clauses of the 1961 Act. Several regulations were tightened. Many new regulations and procedures were introduced to confront a boom in the production and sale of copied artefacts.

At the time of this amendment, a foreign boat was discovered attempting to steal ceramics from an underwater wreck, but was forestalled by the Royal Thai Navy, after which the ceramics were placed on display in the National Maritime Museum in Chanthaburi. This incident prompted amendment of Clause 24 to extend coverage to, “Antiques or objects of art buried in, concealed or abandoned within the Kingdom or the Exclusive Economic Zone,” where the Exclusive Economic Zone included the territorial waters.

This amending Act of 1992 also considerably increased the penalties for various offences. For example the penalty for damaging, destroying, or depreciating the value of an ancient monument was raised to imprisonment up to seven years or a fine of 700,000 baht or both, and the equivalent for an antique or object of art became imprisonment up to ten years or a fine up to a million baht or both.

Conclusion

From the development of the law described above, it can be seen that Thailand has had laws to protect and preserve tangible cultural heritage covering ancient monuments, antiques and objects of art for over a century. The law has been amended from time to time to help preserve the cultural heritage of the nation and the world for future generations.

However, the current law in force, based on the 1961 Act and subsequent amendments, in some cases is not as effective as it should be. Although the provisions are strict and the penalties are high, yet criminals are not deterred by this law and continue to commit criminal acts such as destroying or modifying monuments, constructing buildings within areas registered by the FAD as monuments, looting monuments, stealing antiques and objects of art, or exporting them without permission. In addition, there are problems within the judicial process. Those that have the power to arrest, investigate, and interrogate offenders give scant importance to such cases, compared to cases which threaten life and property. Also, there are problems over budget and manpower resources.

In 2008, the FAD proposed a legal development plan to amend the current legislation, including a new draft law with amended definitions and amendments to other clauses. Some clauses bring the Act into line with government policy on decentralisation by transferring certain responsibilities to local bodies and providing more opportunities for public participation. Some clauses simplify the regulations and procedures relating to the trade in antiques and copied antiques. Other amendments bring the Act into line with international conventions which Thailand is considering to sign, namely: the UNESCO Convention on the Means of Prohibiting the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970; the UNIDROIT Convention on Stolen and Illegally Exported Cultural Objects of 1995; and the UNESCO Convention on the Protection of the Underwater Cultural

Heritage of 2001. Overall this new draft Act considerably expands the legislation from under fifty clauses to over one hundred. The draft has passed scrutiny by the Council of State and is now in the legislative process.