

POLISH AND DANISH REGULATIONS ON THE SEARCH FOR PORTABLE ANTIQUITIES – REMARKS UPON THE RECENT AMENDMENT OF THE LAW IN POLAND

POLSKIE I DUŃSKIE PRZEPISY DOTYCZĄCE POSZUKIWAŃ ZABYTKÓW RUCHOMYCH – UWAGI NA TEMAT OSTATNIEJ NOWELIZACJI PRAWA W POLSCE

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ABSTRACT: The Act of 13th July 2023 amending the Act on the Protection and Care of Monuments constitutes a radical change to the previously existing regulations concerning the search for portable antiquities in Poland using electronic or technical devices. The main modification is waiving the requirement to obtain permission from the Provincial Heritage Conservation Officer for an amateur search for portable antiquities, including archaeological finds. In its place, a system of reporting the surveys via a mobile application will be introduced. This paper compares the current and the new Polish regulations with the solutions successfully adopted in Denmark and analyses the effectiveness of the existing Polish regulations using the available statistical data and considering critical opinions.

KEYWORDS: Denmark, heritage law, metal detecting, Poland, portable antiquities

The discussion about the use of metal detectors in archaeological research and about the general possibility and/or forms of legal metal detecting by amateurs² in

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² I understand metal detecting as the search for portable monuments/antiquities using electronic devices, such as metal detectors.

Poland has been going on since the end of the 20th century (Brzeziński, Kobyliński, 2000). Although the approaches to this issue among archaeologists, researchers, and museum staff vary depending on their personal experience, we can assume that the general division line runs between professional archaeologists and amateurs (also called detectorists or treasure hunters). Generally speaking, most scientific community, including scientists, professional archaeologists, and conservation officers, tends to limit or even exclude the possibility of amateur metal detecting in Poland. At the same time, metal detectorists³ take action to promote liberalisation and simplification of Polish regulations on legal amateur metal detecting⁴. The most significant and recent attempt to change the *status quo* in metal detecting in Poland was the amendment of 13th July 2023 to the Act on the Protection and Care of Monuments⁵, which was supposed to have entered into force on 1st May 2024. The archaeological community widely criticised this amendment⁶. Before comparing the actual Polish and Danish model of the regulation of the search for portable antiquities and analysing the main points of the abovementioned amendment, a quick summary of the existing regulations in Poland together with an attempt to check their effectiveness is in order.

The first goal of this paper is to summarise the current state of the law concerning amateur metal detecting in Poland and to answer the question if the present solutions (and previous amendments to them) meet well the goal of preservation of the archaeological heritage. After that, I will compare Polish regulations with the Danish model, which was said to be an inspiration for the authors of the discussed amendment. The proposed comparison is also justified by the fact that Danish legislation is an example of well-functioning liberal approach to the problem of amateur metal detectorists movement. Comparing Polish and Danish regulations on the search for portable antiquities may help to answer two important questions. How the archaeological heritage protection system in Poland shall be shaped in the future? Which tools already existing abroad could be used in our country to regulate the activity of the metal detectorists with the benefit for the archaeological heritage and considering the challenges of modern times? Finally, I will analyse the provisions of the newest amendment to the Act on the Protection and Care of Monuments and discuss the problem if the change of the regulations concerning the search for portable antiquities in Poland is needed.

I adopted different research methods to answer the posed questions. I started with the description of current legal regulations that are already in force in Poland. After that, I gathered and analysed the available statistical data concerning the number of issued search permits and permits issued for archaeological investigations in recent years to check the capacity of the current Polish permit-based system. The comparative method was used to identify the main differences between the organisation of the

³ Increasingly organised in various associations and foundations.

⁴ Like the conference held in Polish Parliament on 2nd March 2023, organised by the Polish Union of Explorers: <https://odkrywca.pl/konferencja-eksploratorow-w-sejmie/> (access: 30.04.2024).

⁵ Journal of Laws of 2023, item 1904.

⁶ https://www.petycjeonline.com/protestujemy_przeciw_zmianie_prawa_dla_poszukiwaczy_zabytkow (access: 30.04.2024), <https://www.ratuj-zabytki.pl/index.html> (access: 30.04.2024).

search for portable antiquities in Poland and Denmark. Finally, I analysed the provisions of the controversial amendment of 13th July 2023 to the Act on the Protection and Care of Monuments in order to point out its weaknesses and strong points on the basis of the prepared comparison of actual Polish and Danish regulations.

SEARCH FOR PORTABLE ANTIQUITIES – CURRENT STATE OF THE ART IN POLAND

In the current state of the law, according to Article 36, section 1 point 12 of the Act on the Protection and Care of Monuments⁷, in order to make a legal field survey and search for portable antiquities with the use of a metal detector, a permit from the Provincial (Voivodship) Heritage Conservation Officer is required. The conditions and procedure for obtaining it are regulated by the regulation of the Minister of Culture and National Heritage on conducting conservation works, restoration works, and conservation studies on a monument listed in the monument register or on the List of Heritage Treasures, as well as construction works, architectural studies and other activities on a monument listed in the monument register, as well as archaeological investigations and search for antiquities of 2nd August 2018⁸. The application for the search permit must be submitted to the Provincial Heritage Conservation Officer and include the name, surname and address or name, registered office and address of the applicant, an indication of the survey place with geodetic or geographic coordinates of the accuracy of one-hundredth of a second for the boundaries of the surveyed area or the name or number of the cadastral district with the numbers of the cadastral parcels, for the Polish maritime areas – geodetic coordinates plotted on a nautical chart, the name and address of the person in charge of the antiquity search or searching themselves, and grounds for the application⁹. The application must also entail a programme of the antiquity search defining its scope and method, a document proving that the applicant holds the legal title to the property or consent from the property owner or possessor to conduct the antiquity search or a statement that the owner or holder has not given this consent; a topographic map with a scale of 1:10 000 or larger or a cartographic presentation of the topographic object database (BDOT10k), and, for the Polish maritime areas, a maritime navigation map with marked area of the planned exploration¹⁰. The application is processed according to the administrative procedure, and the antiquity search permit is granted as an administrative decision, which might be appealed to the Minister of Culture and National Heritage (art. 127 par. 1 and 2 of the Code of Administrative Procedure)¹¹.

⁷ Consolidated text: Journal of Laws of 2022, item 840.

⁸ Consolidated text: Journal of Laws of 2021, item 81.

⁹ According to the par. 10 sec. 1 of the regulation of 2 August 2018.

¹⁰ According to the par. 10 sec. 3 of the regulation of 2 August 2018.

¹¹ According to the art. 127 par. 1 and 2 of the Code of Administrative Procedure.

As demonstrated above, the process is relatively formalised. The practice shows that one of the most challenging requirements is to attach the landowner's or property possessor's written consent. Admittedly, this requirement may also be difficult to fulfil for professional archaeologists applying for a permit to conduct archaeological investigations. In the 1980s, the conservation authorities issued instructions on how this requirement could be circumvented for the purposes of the Archaeological Record of Poland programme (Florek, 2019, p. 143). Considering all that, the Polish Union of Explores claims that the administrative procedure of granting search permits is inefficient. The main objections raised by the community of amateur metal detectorists are: long waiting time for issuing the permit (3–11 months), numerous calls due to formal deficiencies in the application before the permit is issued, specifying additional obligations in the permit which do not derive from the existing legislation, and a broad definition of an archaeological monument (Kaferska-Kowalczyk, 2023).

An attempt to “measure” the effectiveness of the permit-based model of regulating amateur search for portable antiquities in Poland is barely possible. First, there is no reliable data on the number of amateur metal detectorists. The existing estimates vary a lot: from around 30,000¹² through 58,000–100,000 (Makowska, Oniszczyk, Sabaciński, 2016, p. 174) up to 250,000 people¹³. Unfortunately, we cannot verify these numbers because of the lack of statistical data on the actual number of detectorists active in the field and the frequency of their activity (Makowska et al., 2016, p. 174). On the other hand, we have credible information on the number of search permits issued each year by the Provincial Heritage Conservation Offices. Between 2008 and 2014, the number of issued permits was stable – around a hundred per year (Ministry of Culture and National Heritage 2014, National Programme for the Protection and Care of Monuments 2014–2017, p. 22), but it has been growing since 2015 (Janikowski, 2021, p. 134).

Tbl. 1. Number of issued search permits in years 2009–2019. Source: Information from Ministry of Culture and National Heritage, after: Janikowski 2021, 134

Year	Number of issued search permits
2009	76
2010	89
2011	105
2012	110
2013	110
2014	107
2015	145

¹² Number provided by SNAP – Polish Archaeologists’ Scientific Association.

¹³ As claimed in the justification of the project of the amendment to the Act on the Protection and Care of Monuments from 13th July 2023, probably by the detectorist community itself.

2016	205
2017	242
2018	420
2019	647

The possible explanation for the first growth in the number of issued search permits in 2015 is the amendment of the wording in art. 37 sec. 1 of the Act on the Protection and Care of Monuments, which specified the legislative authority with the statutory power to issue a regulation concerning the procedure for granting antiquity search permits. The amendment entered into force on 30th November 2015 and aimed to clarify the provision of art. 37 sec. 1 of the Act, after the emergence of some article interpretations stating that a search permit is only required when the search for antiquities affects registered monuments listed in the monument register (see: Sabaciński, 2017, p. 35–36).

At the same time, a new regulation of the Minister of Culture and National Heritage on conducting conservation works, restoration works, construction works, conservation studies, architectural studies and other activities affecting a monument listed in the monument register, as well as archaeological investigations and search for antiquities of 14th October 2015 was issued¹⁴. The new regulation stated in its par. 1 sec. 1 p. 8 that it: “sets out the procedure for issuing permits for the search for hidden or abandoned portable antiquities, including archaeological artefacts, using any type of electronic and technical devices and diving equipment” instead of setting out the procedure and method of issuing permits “for the search for hidden or abandoned portable antiquities, including archaeological artefacts, **within registered monuments listed in the monument register** using all kinds of electronic and technical devices and diving equipment” as it was stated before, in the previously applicable regulation of 27th July 2011¹⁵.

The bold excerpt from the previous regulation supported the argumentation that the search permit is obligatory only for metal-detecting activities affecting the areas or monuments listed in the register. This line of reasoning was declared wrong in the judgment of the Provincial Administrative Court in Warsaw on 15th January 2014, VII SA/Wa 1282/13 (see: Sabaciński, 2017, p. 36). Thus, since the adoption of the abovementioned amendment of art. 37 sec. 1 of the Act and the issuing of the new regulation by the Minister of Culture and National Heritage, there is no doubt that a permit is always obligatory to conduct a legal search for antiquities using a metal detector.

The reason for the second, even more noticeable growth in the number of issued search permits (since 2018) was probably the change of the legal classification of il-

¹⁴ Journal of Laws of 2015, item 1789.

¹⁵ Journal of Laws of 2011, no. 165, item 987.

legal search from a misdemeanour to a crime by introducing the new article 109c into the Act on the Protection and Care of Monuments¹⁶, which entered into force on 1st January 2018. The statistical data show a significant growth in the number of issued permits after 1st January 2018 (see: table 1).

As mentioned in this paper, the Polish community of amateur investigators vastly criticised the system of granting search permits through an administrative procedure. Nevertheless, in the last ten years, amending unclear and contradictory provisions of the law on the one hand and strengthening criminal liability for the illegal search for antiquities on the other encouraged some amateurs to use this procedure. However, the number of issued search permits has only increased by 600–700 annually. Even if one considers that some of the permits are granted to organised groups of detectorists, comparing this number to the estimated number of amateurs (30,000–100,000) demonstrates that most of them, unfortunately, fail to apply for a search permit to conduct their surveys legally.

On the other hand, if we compare the number of permits issued for the search for antiquities with those issued for archaeological investigations (see: table 2), we will see that search permit proceedings are still a marginal part of the scope of other administrative proceedings conducted in the Provincial Heritage Conservation Offices. It brings me to the conclusion that there is still room for growth in the number of search permits issued for amateur metal detecting. So maybe we should first consider simplifying (if possible) and adapting legal requirements for applying for the search permits to the contemporary best practices in metal detector surveys instead of altogether abolishing the actual permit-based model in Poland?

Tbl. 2. Number of issued permits for archaeological research in years 2008–2013. Source: Ministry of Culture and National Heritage 2014, National Programme for the Protection and Care of Monuments 2014–2017, p. 22

Year	Number of issued permits for archaeological research
2008	6433
2009	7060
2010	7625
2011	10823
2012	5743
2013	7880

¹⁶ On the basis of the Act of the 22th June 2017 on amending the Act on the Protection and Care of Historical Monuments and certain other acts.

COMPARISON TO DANISH LIBERAL MODEL

In Denmark, no permit or notification to authorities is needed to start a metal detector field survey legally. Only the landowner's consent is required (given in any form, also orally). There are, of course, areas excluded from amateur metal detector surveys, but the exclusion is tailored differently than in Poland. According to art. 29f of the Consolidated Act on Museums¹⁷, metal detectors are prohibited on "ancient relics or monuments" and within a 2-metre distance from them. Unlike in Poland, this prohibition is general and independent of the device's intended use. In my opinion, this solution makes it possible to avoid all the practical difficulties of proving the user's intentions to search for antiquities (as it is in Poland). In practice, amateur metal detecting is also prohibited in public forests – the landowner's (State) consent would not be given, so amateur metal detecting takes place in the cultivated fields¹⁸.

Furthermore, differences in defining an archaeological artefact and categories of monuments protected by law occur between the discussed legal systems. A general definition in section 27, subsection 1 of the Consolidated Act on Museums is similar to the Polish one. According to that provision: "the archaeological cultural heritage includes traces of human activities left from earlier ages, i.e. structures, constructions, groups of buildings, settlements, graves, burial sites, movable objects and monuments, and the context in which these traces are placed." However, strict protection is given notably to ancient relics and monuments under sections 29e and 29f of the Consolidated Act on Museums. The main difference between Poland and Denmark is that the latter has a catalogue specifying the types of ancient relics and monuments protected by law, listed in Annex 1 to the Museum Act. The following types of ancient relics or monuments shall be protected according to Section 29e of the discussed Act **if they are visible in the terrain:**

- 1) Burial mounds, cairns
- 2) Stone cists, dolmens, passage graves
- 3) Ship tumuli
- 4) Moated sites without building remains and shipyards
- 5) Fortifications
- 6) Disused churchyards
- 7) Ruins
- 8) Runic stones, monoliths
- 9) Rock carvings
- 10) Crosses, milestones, boundary stones around royal hunting areas, etc.

Some other types of ancient relics or monuments, listed in Annex 1, Part 2 of the Museum Act, are subject to protection, but only when the authorities notify the owner of their presence. It makes the provisions relatively easy to apply not only for con-

¹⁷ Executive Order No. 1505 of 14 December 2006.

¹⁸ Information obtained from A. Dobat in the course of personal consultations, for which I am very grateful.

servation authorities and archaeologists but also for amateurs. Determining whether the area intended for a survey features a visible archaeological structure and, thus, whether using a metal detector (for any purpose) is allowed is easy, even without any online map of protected sites. If the structures are not visible, the authorities shall notify the landowner of the protected areas where metal detectors and disturbing the ground are prohibited. Moreover, Denmark has a publicly available online map of the country containing all protected archaeological sites and other monuments, with marked boundaries, prepared by the Agency for Culture and Palaces¹⁹.

Denmark adopted its liberal approach towards amateur metal detecting in the late 1970s (Dobat, 2016, p. 70) – without any online tools for find recording (which



Fig. 1. Screenshots from Finds and Ancient Monuments map of Denmark. Source: <https://www.kulturarv.dk/fundogfortidsminder/Kort/>

were introduced only recently). The DIME (Digitale metaldetektorfund)²⁰ research project has private funding and was only officially launched in 2018 (Dobat et al., 2019, p. 2–3). An online database of archaeological finds and a recording scheme for amateur finds may be handy for facilitating new studies based on accumulated big datasets. However, it would not solve all the problems and issues regarding amateur metal detecting. The DIME database's critical features are that using the provided recording scheme is voluntary and that the online find database is independent of the online map of finds, monuments, and archaeological sites. The map may be used for different purposes (like planning the investment processes), making it beneficial not only for amateur metal detectorists but for society. Notably, the DIME database was

¹⁹ See: <https://www.kulturarv.dk/fundogfortidsminder/Kort/> (access: 30.04.2024).

²⁰ <https://www.metaldetektorfund.dk/ny/> (access: 30.04.2024).

initially designed for desktop devices, but after some test runs and discussions of the necessary functionalities, it appeared that a mobile device version is needed to allow quick “on-site” find recording. However, the DIME mobile application only allows a basic recording, which the users shall later complete using a stationary device at the DIME website. The main weakness of the mobile application is that many records remain incomplete and that the photos uploaded by the finders are of poor quality. The investigators tend to focus on metal detecting more than on the detailed find recording (Dobat et al., 2019, p. 8).

An interesting feature of the Danish model is the administrative path of reporting the finds to the authorities. According to section 30, subsections 1 and 2 of the Consolidated Act on Museums:

- (1) Objects of the past, including coins found in Denmark, of which no one can prove to be the rightful owner, shall be treasure trove (*danefø*) if made of valuable material or being of a special cultural heritage value.
- (2) Treasure trove shall belong to the state. Any person who finds a treasure trove, and any person who gains possession of a treasure trove, shall immediately deliver it to the National Museum of Denmark.

In practice, all amateur finds are reported to local museums, where an initial examination of the find is made. If the find is qualified as a treasure trove, it is forwarded to the National Museum of Denmark for further examination. The National Museum determines if the finder shall be financially compensated (Dobat, 2013, p. 708). A well-developed network of local museums responsible for clearly defined geographical areas is crucial in establishing close bonds between archaeologists and amateurs (Dobat, 2013, p. 709). It also enables quick find identification and decision-making on whether the specific object would make a valuable acquisition for the museum or should be returned to the finder instead.

Finally, regulations concerning the treasure trove (*danefø*) finds and rewards paid for such discoveries require a brief discussion. As section 30 subsection 3 of the Consolidated Act on Museum states:

The National Museum shall pay a reward to the finder. The amount shall be fixed by the National Museum with regard to the value of the material and the rarity of the find, as well as to the care with which the finder has safeguarded the find.

The last of the abovementioned criteria appears crucial in promoting best practices of careful handling, proper recording, documentation, and reporting amateur finds to the museum. Surprisingly, the National Museum of Denmark has no fixed budget for paying rewards for treasure trove finds each year – the Ministry of Finance gives an “open credit line” for issuing rewards²¹. The available statistics show that treasure trove rewards were constantly growing from 2012 (0.9 million DKK) until 2020 when

²¹ Information obtained from L. Højberg Bjerg in the course of personal consultations, for which I am very grateful.

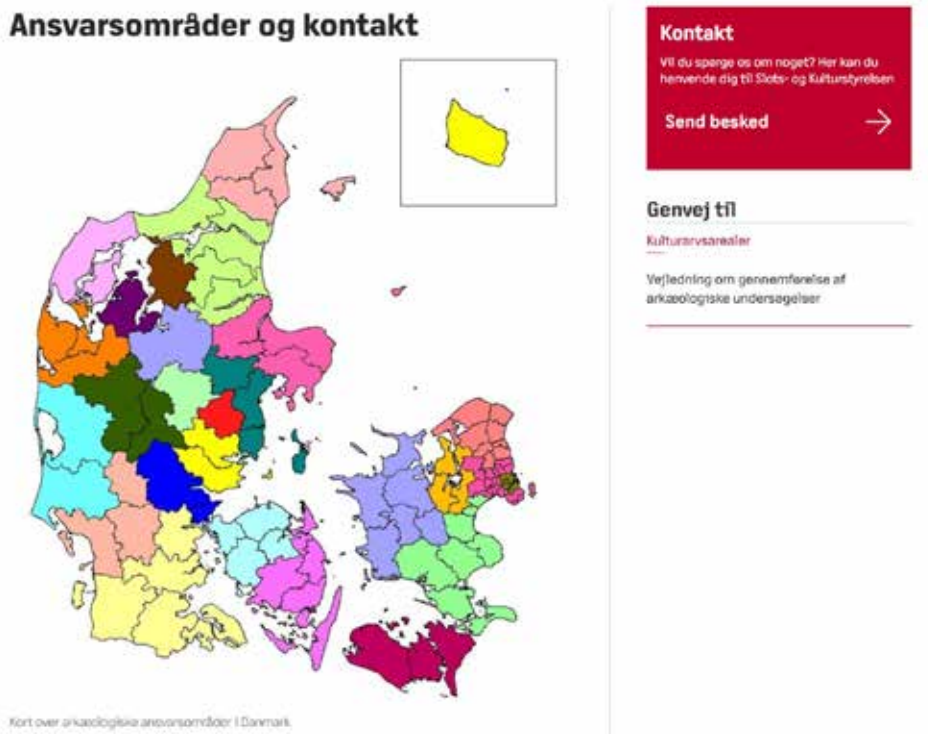


Fig. 2. Map of areas of territorial responsibility of local museums in Denmark. Source: <https://slks.dk/omraader/kulturarv/arkaeologi-fortidsminder-og-diger/arkaeologi/ansvarsomraader-og-kontakt>

the peak of 8 million DKK paid-for rewards was reached. Since 2021, the amount paid has remained stable at 6 million DKK²².

Another essential feature of the Danish treasure trove model is the flexibility of the *danefæ* definition. There is only a very general legal definition of treasure trove in section 30 of the Consolidated Act on Museums. The National Museum's experts develop detailed criteria for qualifying a find as a treasure trove. However, those criteria may change due to the find influx and the changing state of the art. As it is stated on the official website of the National Museum of Denmark: "The National Museum is continuously working on the criteria for the treasure trove and what is perceived as rare, unusual and of cultural-historical value. These criteria are adjusted in relation to the objects already specified as treasure trove"²³.

²² See: <https://en.natmus.dk/sales-and-services/museum-services/treasure-trove/submitting-the-treasure-trove/statistics-on-incoming-potential-treasure-trove-and-their-assessments-per-year/> (access: 30.04.2024).

²³ <https://en.natmus.dk/sales-and-services/museum-services/treasure-trove/what-is-categorized-as-treasure-trove/> (access: 30.04.2024).

THE AMENDMENT OF 13TH JULY 2023

The amendment to the Act on the Protection and Care of Monuments of 13th July 2023²⁴, which is about to enter into force on 1st May 2024, after the extension of the *vacatio legis* for one year, pursuant to the Act of 12th April 2024, removes a requirement for obtaining a search permit for antiquities (except the Polish maritime areas) and is a revolution in the approach to the amateur metal detecting in Poland. Some supporters of the discussed amendment claim that it was inspired by the Danish solutions, especially the idea of using a mobile application for find recording. However, some significant differences appear if we compare the solutions introduced by the amendment to the Act on the Protection and Care of Monuments of 13th July 2023 with the Danish regulations on the search for portable antiquities and cooperation with amateur metal detectorists.

The main objectives of the discussed amendment are as follows:

- a) abolishing the requirement to obtain a search permit for portable artefacts and introducing an obligatory notification of searching for antiquities;
- b) providing a statement that the landowner's consent to search for antiquities has been obtained (in any form) instead of attaching the landowner's consent in writing;
- c) establishing a mobile application dedicated to notifying the search for antiquities, attaching the required statements and personal data, and reporting the finds (which is to be developed by the Ministry of Culture and National Heritage);
- d) awarding a right for a prize to the finder for the acquisition of an archaeological artefact as a result of a legally conducted search;
- e) developing a catalogue of areas excluded from amateur metal detecting by law;
- f) establishing an online search register (in the form of an ICT system) – a central database of notified field surveys (with all required personal data, statements and attachments to the notifications) and of notified portable finds;
- g) obliging the Ministry of Culture and National Heritage to share spatial information on the areas excluded from the surveys with the public (not specified in what form it should be done).

While the fiery debate between professional archaeologists (or at least a significant part of them) and amateur metal detectorists on whether the liberalisation of amateur metal detecting can be beneficial for protecting Poland's archaeological heritage is still rolling, a deeper insight into the wording of the provisions of the amendment of 13th July 2023 shows that it was prepared in a piecemeal manner. It fails to consider the legal framework of Poland's heritage protection system. Moreover, it ignores the capacity of the heritage protection services and practical problems related to verifying

²⁴ Journal of Laws of 2023, item 1904.

and digitalising the existing databases of recorded archaeological sites, other immovable monuments, cemeteries, and many others. I shall outline my main concerns below.

Firstly, introducing an obligatory notification of the search for antiquities is not followed by any timeframe preceding the survey start, which means that the intention to search may be declared just before going to the field. Moreover, the Provincial Heritage Conservation Officer cannot express a formal objection against the search notified in a particular area or by a specific person. It makes us question the purpose of the search notification system if no option for a disagreement to a particular search was given to authorities responsible for heritage protection.

Secondly, according to the amendment of 13th July 2023, using a mobile application to notify the planned search for antiquities is mandatory²⁵. It should be assessed as a form of discrimination against people who are unable or do not want to use the Internet and online tools to inform about their searches for antiquities and report the finds. In my opinion, using an application shall always be voluntary and there must always be a “traditional” offline procedure for reporting the finds and notifying the intention to start the antiquity search. We should be aware that online registers and/or mobile applications may not always be available and that Internet access networks may not cover some survey areas. However, an online recording scheme for portable artefacts connected with a mobile application facilitating direct reporting of finds “from the field” would be helpful for professional researchers and amateurs. The widely-known solutions from England and Wales – Portable Antiquities Scheme²⁶ and Denmark – DIME Digitale Metaldetektorfund show that establishing an online recording scheme for portable finds is possible. Both databases proved very successful, but it is noteworthy that their use by metal detectorists to report their finds is entirely voluntary. Authors of the Polish amendment of 13th July 2023 to the Act on the Protection and Care of Monuments, in the rationale to the amendment²⁷, claim that they were inspired by the DIME platform. However, there are considerable differences between the DIME database and the projected mobile application to notify the planned search for antiquities in Poland – the use of the latter will be obligatory and the application shall be entirely established and financed by the State.

Thirdly, after analysing provisions of the new Polish law on the search of portable antiquities, it seems that it focuses on the search notification procedure and the maintenance of the “search register” (even the vocabulary used in the amendment suggests so). In contrast, the emphasis should be placed on the finds and their proper recording. The discussed amendment has imposed no obligation to record detailed GPS coordinates of the finds, make photographic records, or follow the best practices in extracting an artefact from the ground (or refraining from doing so in some instances). It has to be assessed as a significant omission since such obligations were

²⁵ As it is stated in the new art. 36b of the Act on the Protection and Care of Monuments, introduced by the amendment.

²⁶ <https://finds.org.uk/database> (access: 30.04.2024).

²⁷ See: <https://orka.sejm.gov.pl/Druki9ka.nsf/0/9FB134537D0A14B8C12589D0005451CE/%-24File/3383-uzas.docx> (access: 30.04.2024).

frequently imposed on metal detectorists in permits issued by the Provincial Heritage Conservation Officer.

Some solutions in the discussed amendment may be considered positive, yet with certain remarks. Waiver of the requirement to obtain written consent from the landowner to search for antiquities on their property simplifies the procedure. In practice, obtaining such consent from private field owners in certain areas is often challenging. Public entities (like State Forests) owning the land will probably still grant their written consent. However, the same waiver should be adopted for entities applying for permits to conduct archaeological investigations – there is no reason for a different (better) treatment of amateur metal detectorists compared to professional archaeologists.

The idea of developing a catalogue of areas excluded from amateur metal detecting and sharing spatial information on such areas with the public is necessary and should be assessed positively. If we want to prohibit some activities, like metal detecting, in vulnerable areas²⁸, we should first provide easy access to the information on their location. Again, other countries provide excellent examples of disseminating information on archaeological sites and other immovable monuments to the public through online maps: Denmark²⁹ and the Czech Republic³⁰. The main problem in Poland is that the information on the areas and objects that should be included in such a centrally operated digital database are now kept in various registers (administered by different central and local government units) and must be verified and synchronised before uploading them to the new spatial information system. Particularly, there is a need to verify the compatibility of the digital data held by the National Heritage Institute³¹ with the provincial monument records. The process shall be completed by the end of 2027³². The existing technical problems should not prevent us from establishing an online database of archaeological sites, immovable monuments, known old cemeteries and other cultural heritage protection areas. Such a tool would be convenient for all archaeologists, people involved in cultural heritage protection, and those planning various investment processes. Creating an “archaeological map of Poland” should be independent of the change in the regulations concerning the search for portable antiquities.

The last but not least issue is awarding prizes for the acquisition of portable antiquities obtained during legal metal detecting activities. The amendment will change the wording of art. 34 of the Act on the Protection and Care of Monuments by explicitly adding the possibility of awarding those who found or acquired an archaeological artefact as a result of their legal search using electronic devices. It is a fundamental

²⁸ Like archaeological sites listed in the register, cultural parks, old cemeteries, etc.

²⁹ <https://www.kulturarv.dk/fundogfortidsminder/Kort/> (access: 30.04.2024).

³⁰ Archaeological Atlas of the Czech Republic: <https://www.archeologickyatlas.cz/> (access: 30.04.2024).

³¹ Presented at the <https://zabytek.pl/pl> site (access: 30.04.2024).

³² E-mail information obtained from the Department of the Protection of Monuments of the Ministry of Culture and National Heritage.

change compared with the current state of the law. Currently, an award may be granted to the finder of an archaeological artefact only in two situations: when a discovery is made during the construction works or earthworks³³ or when it is an accidental discovery³⁴. Art. 34 sec. 2 of the Act excludes individuals who professionally conduct archaeological surveys and all staff employed in groups conducting such surveys from the possibility of being granted an award. According to comment to art. 33 of the Act by Prof. K. Zalasinska, finding an archaeological artefact during the antiquity search (based on a permit) cannot be interpreted as an accidental discovery specified in art. 32 of the Act:

An accidental find of an archaeological artefact is not the discovery of an artefact due to ongoing archaeological investigations or exploration. An accidental find results from an action not directed towards discovering an archaeological artefact, i.e. an action whose consequences in the form of finding an archaeological artefact could not be foreseen. It is not, therefore, an accidental find if a person allows for the possibility that their actions will result in finding an archaeological artefact. (Zalasinska, 2020, comment to art. 33, edge number 3)

In the current state of the law in Poland, a fundamental difference exists between finding an “ordinary” antiquity and an archaeological artefact during a planned and legal search for antiquities. According to par. 4 sec. 2 of the regulation of the Minister of Culture and National Heritage of 2nd July 2015 on rewards for finding antiquities or archival materials³⁵, in the case where the item was found as a result of an ongoing search that required a permit from the Provincial Heritage Conservation Officer, the award is granted as long as the finder searched for the finds based on and following the terms of the permit. This provision applies only to “ordinary” antiquities, not archaeological ones. The differentiation of the finder’s situation and the possibility of granting a reward based on the type of the acquired object must be assessed critically. Giving the possibility of receiving an award to a finder of an archaeological artefact who applied for a search permit, obtained it and followed all of its terms during the exploration (just as a finder of an “ordinary” antiquity) is a step in the right direction. I would not be afraid of the cost of the awards granted to metal detectorists – the goal of the award is to encourage the appropriate treatment of the finds and report all of them. Thus, I believe the price is worth paying.

Critical voices claim that granting prizes for acquiring archaeological artefacts through legal surveys using metal detectors or other devices will give unjustified profits to the detectorists and become a considerable cost for the State (Danielewski, 2023). Regarding this, I would like to point out that granting the right to a reward for discovering an archaeological artefact during the discussed surveys is the only change in the current system of granting awards for discoveries and accidental finds of ar-

³³ According to the art. 32 of the Act on the Protection and Care of Monuments.

³⁴ According to the art. 33 of the Act on the Protection and Care of Monuments.

³⁵ Journal of Laws of 2015, item 979.

chaeological artefacts introduced by the discussed amendment. Art. 34 sec. 2, 3 and 4 in the new wording is a straight transposition of the provisions already adopted in the Regulation of the Minister of Culture of 1st April 2004 on rewards for discovering or finding archaeological artefacts³⁶, which have been in force for 20 years. It should also be noted that after introducing the possibility of granting rewards for finding “ordinary” antiquities or archival materials during a search based on a permit from the Provincial Heritage Conservation Officer, no problems concerning the excessive number of award applications have been reported. Concerning the archaeological artefacts, we should bear in mind that granting the award request is only possible if the Provincial Heritage Conservation Officer establishes that the current limits of the financial rewards have been retained and that the decision on the nature and amount of the award is at the complete discretion of the Minister of Culture and National Heritage. Hence, the authorities have tools to prevent granting excessive rewards for discoveries of archaeological artefacts.

CONCLUSIONS

A growing interest in amateur metal detecting raises questions about the capacity of the system of administrative permits to search for antiquities to proceed with more and more applications. Another problem is that many metal detectorists do not even try to apply for a permit and conduct field surveys illegally. Nevertheless, a complete abolition of permits from the conservation authorities, at least within the framework of Poland’s current cultural heritage protection system, may generate even more problems and chaos. The first step in remodelling and updating this system should be to verify and integrate all existing databases of finds, monuments, archaeological sites, cemeteries, and other protected areas. Only then may a central, digital database of all areas of archaeological and cultural importance that are (or shall be) protected by the law be established. The data should also be incorporated into an online map. Such a digital archaeological map of Poland should include complementary online tools for submitting electronic applications for archaeological investigations and survey reports, as well as a registration scheme for new finds (both accidental discoveries and results of surveys with metal detectors and other devices). All the abovementioned digital tools would benefit researchers and professional archaeologists and could be introduced regardless of how the issue of amateur metal detecting will finally be settled in Poland. It is also clear that a proper selection of protected archaeological sites, immovable monuments visible in the terrain, old cemeteries, soldier graves, and other vulnerable areas (like forests, lakes, etc.), combined with easy-to-reach information on protected areas is necessary to grant the public broader access to metal detecting.

Including more amateur metal detectorists in the heritage conservation system and engaging the public in protecting the archaeological heritage should be assessed

³⁶ Journal of Laws of 2004, no 71, item 650.

positively. However, a detailed analysis of the solutions introduced in the amendment of 13th July 2023 to the Act on the Protection and Care of Monuments demonstrates that it is underdeveloped, fragmentary and adopted in a rush. It was not preceded with any in-depth preparations and discussions with all stakeholders involved in the protection of archaeological and cultural heritage. Implementing new regulations, especially when based on foreign solutions should follow a thorough study of their practical performance, socioeconomic context, and impact on the rest of the Polish heritage protection system.

Thus, the focus shall first be given to establishing an online archaeological map of Poland with online registration schemes for archaeological excavations, non-invasive surveys, metal detector surveys and their results (so-called “archaeological information system of Poland”, similar to the Czech one). When such a toolkit is developed, implemented and tested by researchers, commercial archaeologists and amateur metal detectorists (operating under current rules), the discussion about the possible liberalisation of the legislation concerning amateur metal detecting will be easier and more fruitful. I believe any amendment to the existing regulations must also include a change in the definition of a monument and archaeological monument to remove their discretionary nature. The possibility of reporting the finds directly to regional museums (those featuring archaeological departments) instead of reporting them to Provincial Heritage Conservation Officers shall also be discussed. It could be beneficial for establishing closer cooperation between museums and local history enthusiasts and may lead to involving them in professional research projects.

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BIBLIOGRAPHY

Literature

- Brzeziński, W., Kobyliński, Z. (eds) (2000). *Wykrywacze metali a archeologia*. Warszawa: Stowarzyszenie Naukowe Archeologów Polskich.
- Danielewski, M. (2023) *Grozi nam rabunek skarbów. Oto siedem grzechów głównych nowej ustawy [OPINIA]*. Downloaded from: <https://businessinsider.com.pl/prawo/opinie/poszukiwanie-skarbow-bedzie-proste-a-nagrody-dla-poszukiwaczy-duze/jcqc7kn> (access: 30.04.2024).

- Dobat, A. (2013). Between Rescue and Research: An Evaluation after 30 Years of Liberal Metal Detecting in Archaeological Research and Heritage Practice in Denmark. *European Journal of Archaeology*, 16(4), 704–725.
- Dobat, A. (2016). “Professional Amateurs”. Metal Detecting and Metal Detectorists in Denmark. *Open Archaeology*, 2, 70–84.
- Dobat, A., Christiansen, T., Henriksen, B., Jensen, P., Laursen, S., Jessen, M., Ruhe, R., Arntsen, F., Holst, M. (2019). The DIME project – Background, status and future perspectives of a user driven recording scheme for metal detector finds as an example of participatory heritage. *Danish Journal of Archaeology*, 8, 1–15.
- Florek, M. (2019). Badania archeologiczne, poszukiwanie zabytków, wydawanie pozwoleń na nie. Absurdy, wewnętrzne sprzeczności, niekonsekwencje i braki w przepisach prawnych ich dotyczących oraz propozycje zmian. *Raport*, 14, 137–149.
- Janikowski, J. (2021). Przystępstwo poszukiwania zabytków ruchomych bez pozwolenia lub wbrew jego warunkom. *Studia Prawnoustrojowe*, 52, 133–144.
- Kaferska-Kowalczyk, J. (2023). *Biurokracja, uznanie administracyjne, brak spójności przepisów i pojęcia niedookreślone, jako sposób na reglamentację prawa obywateli do poszukiwań*. Downloaded from: <https://pze.org.pl/wp-content/uploads/2023/07/Joanna-Kaferska-Referat.pdf> (access: 30.04.2024).
- Makowska, A., Oniszcuk, A., Sabaciński, M. (2016). Some Remarks on the Stormy Relationship Between the Detectorists and Archaeological Heritage in Poland. *Open Archaeology*, 2, 171–181.
- Ministerstwo Kultury i Dziedzictwa Narodowego (2014). Krajowy program ochrony zabytków i opieki nad zabytkami na lata 2014–2017. Downloaded from: https://nid.pl/wp-content/uploads/2021/12/OZ_dodatek_KPOZiOnZ.pdf (access: 30.04.2024).
- Sabaciński, M. (2017). Poszukiwania i własność zabytków oraz nagrody za odkrycia w świetle zmian przepisów w 2015 i 2016 roku. *Kurier Konserwatorski*, 14, 35–40.
- Zalasińska, K. (2020). *Ustawa o ochronie zabytków i opiece nad zabytkami. Komentarz*. Warszawa: C.H. Beck.

Legal acts

1. Act of 22nd June 2017 on amending the Act on the Protection and Care of Historical Monuments and certain other acts (Journal of Laws of 2017, item 1595).
2. Act of 13th July 2023 on amending the Act on the Protection and Care of Historical Monuments (Journal of Laws of 2023, item 1904).
3. Act of 23rd July 2003 on the Protection and Care of Monuments (consolidated text: Journal of Laws of 2022, item 840).
4. Act of 14th June 1960 – Code of Administrative Procedure (consolidated text: Journal of Laws of 2024, item 572).
5. Consolidated Act on Museums – Executive Order No. 1505 of 14th December 2006, downloaded from: https://slks.dk/fileadmin/user_upload/kulturarv/english/dokumenter/Consolidated_Act_on_Museums_Executive_Order_No.1505.pdf (access: 30.04.2024).
6. Regulation of the Minister of Culture and National Heritage of 27th July 2011 on conducting conservation works, restoration works, construction works, conservation research, architectural research and other activities affecting a monument listed in the monument register, as well as archaeological investigations (Journal of Laws of 2011, no. 165, item 987).
7. Regulation of the Minister of Culture and National Heritage of 14th October 2015 on conducting conservation works, restoration works, construction works, conservation studies, architectural studies and other activities affecting a monument listed in the monument register, as well as archaeological investigations and search for antiquities (Journal of Laws of 2015, item 1789).
8. Regulation of the Minister of Culture and National Heritage of 2nd August 2018 on conducting conservation works, restoration works and conservation research on a monument listed in the monument

register or on the list of heritage treasures, as well as construction works, architectural research and other activities on a monument listed in the monument register, as well as as well as archaeological investigations and search for antiquities (consolidated text: Journal of Laws of 2021, item 81).

9. Regulation of the Minister of Culture of 1st April 2004 on rewards for discovering or finding archaeological artefacts (Journal of Laws of 2004, no 71, item 650).
10. Regulation of the Minister of Culture and National Heritage of 2nd July 2015 on rewards for finding antiquities or archival materials (Journal of Laws of 2015, item 979).