

On the amendment to "The Act on the Protection and Care of Historical Monuments of July 23rd, 2003"

The current Act on The Protection and Care of Historical Monuments of July 23rd, 2003 (Dz. U. Nr 162, poz. 1568, with later amendments) was not perfect. In fact, it barely did the job it was intended for. It was composed of incoherent and somewhat heterogenous articles that betray its complex history of ad hoc modifications since it was first published in 2003.

However, on 5th June 2023, under the pressure of a lobby group representing hobbyist artefact or simply treasure hunters, an amendment was proposed to the existing Act that would further weaken its effectiveness as an instrument to protect the national archaeological (and historical) heritage from looters. The proposed changes modify the existing regulation for the benefit of just one group of unprofessional prospectors using metal detectors. They do nothing to improve the protection of Polish heritage (as claimed by its originators/authors), but in fact make it more difficult. Moreover, the hastiness with which the proposal was pushed through legislative consultation is alarming. After only six weeks, the amendment is already awaiting the Polish head of state's signature, to be passed into law.

The amendment was written by and consulted only among metal detectorists. The negative opinions expressed by archaeologists, medieval historians, museologists, conservators and other professionals in Polish heritage protection were ignored. As a result, the amendment has a number of significant flaws and should not be adopted into law in its current form. Moreover, legal analysis of the amendment indicates that it violates Article 5 of the Constitution of the Republic of Poland and articles 3 and 10 of the European Convention on the Protection of the Archaeological Heritage (revised), as agreed in Valletta on 16th January 1992, and also ratified by Poland.

Below, only a few of the most disturbing issues of the amendment of 5th June 2023 to the Act on the Protection and Care of Historical Monuments are detailed. The amendment, as adopted by the Parliament of the Republic of Poland on July 13th, 2023, removes state control over the search for artefacts to the sole benefit of detectorists (in fact treasure hunters). It removes the need for permits issued by the voivodeship's Conservator of Historical Monuments in favour of a digital applications automatically handling notifications. This notification process does not exist yet, and it is not known how it will work, apart from automatically accepting applications requiring only two things: registration and sending of a notification of a metal detector search about to take place on a site of the searcher's own choosing, after which they can begin to dig up artefacts.

Thus, preferential rules are introduced for treasure hunters, different from those for people who discover an item by accident or during excavation or construction works (and who must halt their works after such discoveries), not to mention researchers, who are still required to submit their research plans in writing, for review by conservation services.

The amendment equates the search for small metal elements in forests and fields with the search for deposits and hidden treasures inside buildings, crypts and other historical objects, which will also only require

notification, without the provincial Conservator of Historical Monuments being able to influence or monitor the methods used on site as at present.

One aspect of the current permissions system (that constituted one of the greatest barriers for detectorists) the requirement of written consent of the landowner, was changed to a mere statement that such permission has been obtained, without the need to indicate that actual contact was made with the owner at all.

The amendment provides no protection at all to historic battlefields or newly discovered archaeological sites, which may be exploited by detectorists, after a one-month grace period has passed (until the time-consuming procedure of entering the site into the national monuments registry is completed).

It is also planned to change the system of rewards for the discovery of archaeological artefacts, which until now, due to fears of encouraging the "commercial scale" exploitation of archaeological sites by hobbyists, were granted only to accidental finders, after verifying the circumstances of the discovery. After changing the regulations, financial prizes will be awarded to treasure hunters for each find of special historical, artistic or scientific value. This is a rule that *expressis verbis* encourages a race for "better", "prettier", "bigger", and "cooler" trophies, in an environment already built around the "hunter" ethos, where the number and quality of obtained trophies determines social status among peers. It is, in fact, a statutory professionalisation of treasure hunting without the need to set up a business, and the number of people who search for artefacts only for profit may quickly exceed the number of hobbyists motivated by a real passion for history.

Until now, awards were not available to persons professionally involved in archaeological research or employed in organised groups to conduct archaeological fieldwork. This rule/directive has now been removed and, in addition to the fact that archaeologists will be able to claim prizes, archaeological sites will be in great danger of looting by persons employed to do manual labour on research excavations.

According to the estimated number of beneficiaries of this amendment (given in the explanatory memorandum to the draft of the act), the annual cost of the prizes alone will reach up to 250 million PLN, if each beneficiary/detectorist qualifies for an award worth one thousand zlotys each 12 months. This sum does neither include the costs of expert opinions, administration, curation, inventory and storage of artefacts nor the costs of verification of the claimed site of discovery; all of which remain state responsibilities.

The certainty of getting a reward for each valuable find will lead to an escalation of phenomena irreversibly affecting Polish culture, heritage and science. People with illegal collections of archaeological artefacts, which have not been sold so far due to fear of the consequences or lack of appropriate contacts, will now be given the opportunity to sell their collections by falsely declaring them as fresh finds under the new notification system.

There will be no control over the activities of treasure hunters, despite the application of criminal law, because the amended law has no provision for access to the automatic application systems to be provided to the police, municipal guards or other law enforcement agencies.

The described amendment sets a bad precedent on a European scale, as a measure that clearly and solely benefits treasure hunters. It will also inevitably lead to the emergence of detectorist tourism from countries with less liberal regulations, driven by the prospect of financial gains.

Among the few known details discussed for the planned new permissions system, there is an option to register an artefact search with only a passport number. This would open the doors to treasure hunting in Poland for foreign citizens, including people from outside the European Union. In particular, mass imports of artefacts from Ukraine can be expected. Due to the war in Ukraine, the looting of the country's archaeological sites has reached an almost industrial dimension, and black market prices for the artefacts are much below their actual value. The proposed amendments will create conditions where these artefacts could be falsely reported to have been found in random places in Poland and thus eligible for prize money.

Such false provenance claims will irreversibly distort our picture of Poland's prehistoric past and contest previous academic findings in ways that can never again be resolved. At the same time, the amended Act will provide an opportunity to legalise finds in Poland that were acquired illegally in other neighbouring countries. Poland will become Europe's destination of trade in stolen artefacts, enabled by the Polish state under the rule of law.

The ongoing armed conflict in Ukraine also shows how fundamental cultural heritage is for the identity of states and nations. Monuments, museums, cultural objects, libraries, churches and memorial sites have become the target of planned Russian attacks, aimed at erasing the independent memory of generations, destroying not only the defenders' will to resist, but also their national identity. These mechanisms are well known to the people of Poland from our own history. Poland, as a border state in the face of this conflict, an ally of Ukraine and an opponent of Russia, is the target of hybrid attacks, attempts to destabilise and dismantle public order. In its current form, without appropriate control mechanisms, this amendment to "The Act on the Protection and Care of Historical Monuments of July 23, 2003" is another gateway to such activities.

The obligation to protect and manage our archaeological heritage allows only planned and scientific research in places where archaeological sites are threatened by destruction, and to a small percentage on sites selected for academic projects. All other sites should be protected *in situ* for future generations. An uncontrolled treasure hunt is a straight path to the irreversible destruction of our national heritage.

Therefore, this imminent threat to Polish heritage process must be stopped immediately. Strong objections to the amendment to "The Act on the Protection and Care of Historical Monuments of July 23rd, 2003" have already been expressed by the following institutions:

- Scientific Association of Polish Archaeologists
- Councils for the Protection of Archaeological Heritage
- Association of Polish Museologists

- Association of Conservators of Antiquities
- Conference of Deans and Directors of the Faculties and Institutes for Academic Archaeology in Poland
- National Institute of Museology and the Protection of Collections
- National Heritage Institute