

Proposals on the introduction of application fees for metal increases matters
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The Ministry of Culture 103 33
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Review statements from the Swedish Metal Increases Association - SMF

Summary

Sveriges Metallsökarförening - SMF rejects the National Heritage Board's proposal on the introduction of fees for applications for permits for the use of metal detectors.

The association predicts that case the amount of the county administrative boards will be reduced radically by the introduction of an application fee, regardless of the class fee. We fear that applications relating hobby increase will basically cease entirely.

Applications for finding lost items such as keys, jewelry or similar items in the private sphere will also be discontinued.

The illegal use will increase and discoveries made in connection with this will not be reported as antiquities or lost property.

The current legislation on the use of metal detectors battles likely to EU law. The use of metal detectors in places with no registered archaeological remains are likely impunity. Introduction of a fee will harm the development of the cultural environment and reduce the attractiveness of local cultural history.

The introduction of the fee will undermine respect for the law and becoming a failure of the rule of law.

Sveriges Metallsökarförening - SMF consider that the proposal lacks basic analysis and alternative solutions and that the EU law, and the consequences have not been considered.

Background

On 1 January 2014 entered Cultural Heritage Act (1988: 950) in force today concerns questions regarding metal detection. But that has for decades been limitations in the use of metal detectors. The purpose of the new law was to introduce a law which was in accordance with the competition rules within the EU. State law aspects were therefore applicable to a general ban on the use metall-sökare. The European Commission had criticized Sweden for its disproportionately strict laws regarding metal detectors. The prohibition appeared disproportionate inskränkning in legitimate circumstances to use metal detectors. The Commission considered that the ban constituted an obstacle to the free movement of goods within the European Union and therefore Sweden was invited by the Commission to take steps to overcome the shortage.

Under the threat of becoming embroiled in a lawsuit at the European Court of Justice led government finally;

"The government believes, however, that there may be reason to question whether the current prohibition against the use of metal detectors is completely appropriate and are therefore willing to reconsider the scope and design of this. The Government therefore intends to Riksantikvarieämbetet instructed to promptly investigate an alternative mechanism to the general prohibition. The focus should then primarily be to prohibit the use of metal detectors and adjacent archaeological sites, as well as to prohibit the search for archaeological objects. In the most affected regions, such as Öland and Gotland, the general ban should be considered. While other solutions should be considered, on the basis that the general prohibition modified and that the Swedish regulatory framework should be

compatible with EU law. "

The infringement case, the Commission initiated after a complaint thus led to the Swedish government finally shared the Commission's view and agreed to modify the legislation in accordance with EU law. The commitment was förpliktigande. Obstacles to the free movement of goods must be justified by compelling reasons and be treated equally, necessary and proportionate designed. It was deemed on the previous legislation. The new rules on the use of metal detectors were thus because of the criticism Sweden incurred for the trade, the then legislation had resulted. National Heritage and Ministry was therefore commissioned by the government to propose modifications in the legislation so that they meet the EU rules. The review then already going around the Antiquities Act were later also a supplementary directive also to propose changes to the legislation so that they were in compliance with EU law. The government also admitted that the rules in force regarding the use of metall-sökare was not formulated. This did not lead to the actual text of the law was clarified to any significant extent, but the purpose of the new law was to repeal the anti-competitive barriers that previously lagstiften accounted for. Criminal aspects can also be cited about the current legislation regarding metal detectors. The European Court has instead decided several other targets that are closer to the assessment to be made of the type of import restrictions applicable to metal detectors. In a case involving the use of jet skis rejected the European Court of Swedish regulations. In case had prosecutors indicted two people, Mickelsson and Roos, to the forward jet off a fairway. The Court held that the Swedish rules limiting the use of personal watercraft was not proportionate and considered in practice that the current regulation could be the basis for criminal proceedings. The prosecutor chose later to withdraw the indictment against jet skiers.

Following the Council on Legislation to the new law was criticized for the government's proposal directly to the Commission. The critics said that the bill did not meet the Union law on property rules and still constitute a barrier to trade. Head of Unit "Free movement of goods" within the European Commission, Raluca Pruna, was to reply in writing to the criticism; "It appears that Approved non-archaeological related usage is exempted from the general ban on the use of metal detectors. Sections 19-20 seem to Facilitate a case by case assessment exception with regard to the specific archaeological status in the area in Which the metal detector is Intended to be used and the general necessity of the use of a metal detector. "

"Given That the exception ice Clearly defined and defines the Responsible Authority for the Issuing of Permits, the Commission considers That the Proposed Measures strike an adequate balance between the protection of archaeological remains and the free movement of goods".

Representatives of the Commission perceives therefore that the use of metal detectors for hobby use in cases other than to search for ancient finds at ancient sites would no longer be covered by the general prohibition. The Commission also believes that the exclusion of the law are well defined and represents a reasonable balance between the protection of ancient monuments and Union law on the free movement of goods. The statement should be seen in the fact that the Swedish government has admitted before the Commission that the restriction as the previous legislation meant was contrary to EU law. The state has regularly communicated with the Commission about the changes they intended to take to abolish the trade barrier. It has just mentioned, the Commission accepted.

The commitment of the Swedish government now made to the Commission must indeed be Swedish authorities also follow, that is, the introduction of the relaxation of licensing for metal detectors in places other than on the ancient monuments. Such an approach means that the principle established by the European Court of Justice in Mickelsson & Roos is logical and consistent with the statement of the head of the "Free movement of goods" within the European Commission.

The basis of the ECJ's position was that the Swedish legislation was disproportionate because the county administrative boards had designated areas where the jet would take place without the environmental and health risks. It goes without further build similar approach to the use of metal detectors. The European Commission may be deemed to have accepted a general prohibition of hobby use of metal detectors in places where there are documented archaeological remains that could be harmed by an unfair use of metal detectors, Raluca Prunas uttalanden can not be interpreted otherwise.

It would, in consequence of this could also mean that the crimes occurred in places other than on the ancient monument is not punishable. It can therefore be denied that the authorization to use metal detectors in areas that do not have documented ancient monuments contrary to EU law on free movement of goods and becomes actionable. If a Swedish court would hesitate on EU law applicable, and considering that the basic principle of ruling against Mickelsson & Roos would not be applicable, the court may seek a ruling by the European Court of Justice. Currently there are at least an administrative matter for examination where a detektorist requested prior authorization by the European Court of Justice.

Sveriges Metallsökarförening believes that the current legislation and the application it had not led to the easing of EU Commissioners provided. It may even be argued that the state brought the Commission misled by the promises made to avoid further prosecution subsequently not fulfilled.

This is reinforced by the enforcement regulations and general guidelines which the National-antikvarie-ämbetet implemented from July 1, 2016, which among other things requires approval from the landowner before the provincial government is dealing with an application for the use of metal detectors in a geographical area. The provision has no precedent and has the sole purpose to hinder the use of metal detectors. It is also a requirement that can not be supported by cultural law. The current proposal on the introduction of the charge has the same objective. National Heritage Board wants to reduce the number of licenses for the use of metal detectors. This is a further konkurrens-begränsade regulation also lacks precedent.

The facilities would be introduced in the new law regarding the use of metal detectors, was foreseen in the bill could be handled within the county administrative boards' existing resources. It also shows that the processing of the applications that the county administrative boards today applies not expected by Parliament.

Overall, the current law and the latest proposal by the National Heritage Board led to a stricter regulation of the use of metal detectors than that applied when the EU Commission in 2008 directed his criticism against the then legislation.

problem Description

The memorandum stated that the increase in the number of applications would be 1.200 percent. There should be a calculation error and should instead be more than 400 percent. Which of course is also a big increase, but it is not 1.200 percent claimed as a basis for imposing a fee on applications.

There has been an increased interest in the metal increase in recent years and there are several reasons for this. One reason is the expected easing of the legislation that enabled a nascent interest in this. Technological developments and the increased interest in recent history at the local level have also contributed to the development. Objects that are less than 160 years, often a story to tell. Industrialisation and urbanization have created environments that can be excellent areas to search.

Sveriges Metallsökarförening gets just over 50 new members each year. If one estimates the number of metal detectors sold by a major importer, it is about a fifth joining the association. We also see that the individual detektoristen applying an average of ten per year and eight out of ten applications comes beaches, which should be relatively easy to handle. Despite this was rejected about 20 percent of applications in 2015. This usually results in the applicant hedging through to apply for licenses in several geographic areas than originally intended, because chances are that the application be refused. This leads to more applications than should actually be necessary.

It can happen that a detektorist find items that are older than 1850. Usually it is about coins rarely exercised by the state. LOST coins and other objects can contribute to new knowledge about the environment where they are discovered and can develop the local historical interest in their city or local history. Found objects also provide a better basis for archaeological assessments and efficient use of resources in this regard. The ancient finds can mean additional costs in the form of registration, disposal, preservation, etc. may be considered a cost that is borne by society and should be set against the cultural value of its discovery, and that is not destroyed by eg acid rain, agriculture or forestry.

Suggested solution

As already noted, the introduction of a fee for the sole purpose obstructing the use of metal detectors. This is particularly evident when it is clear from the proposal that the direct aim of the levy is not to the county administrative boards to save money. It is contradictory when the proposal has as a basic starting point that the county councils lack the resources to process applications.

Sveriges Metallsökarförening opposes the introduction of a fee at all.

The proposal makes Riksantikvarieämbetet comparison with the charges applicable to the application for a firearms license or notification of kamerövervakning. A crucial difference between this and a license to use the metal detector is that the former is valid until further notice, and the latter for up to one year. The detector lard annually to pay 700 SEK is therefore unreasonable. It seems moreover unreasonable because the detector lard can not in advance with any degree of certainty the likely outcome of the provincial government assessment. Right Position on the new law is still unclear and enforcement regulations and general advice have not spent any more clarity on the issue. In addition, it may happen that a detektorist find such items to the area is no longer suitable for continued increase in metal. Such items may be ancient finds of significance or objects belonging to a criminal investigation of crimes. It can lead to a county revoke a license or a police avlyser an area. Based on the idea that the National Heritage Board has regard to demands on the landowner's permission would even she or he could change his mind and withdraw a previous consent. Under these conditions, detektoristen also lose the opportunity to continue with their hobby.

If the institution of a fee as the fee shall correspond charge Class 1 (250 SEK). Given the

diverse application of the administrative boards of the lack of legal certainty on a number of points, the applicant offered to pay the levy retrospectively. The conditions are now such that there is serious reason to apply such a procedure. It is unreasonable that individuals should have to pay a fee to the state does not have clear and predictable rules.

The National Heritage Board's memorandum suggested that each geographical area will be charged a fee. Today it is not uncommon to detector lard applicant for authorization for several geographically contiguous areas. The reason is that if found, an ancient finds of significance as risk detektoristen länsstyreslen to revoke the permit. If the area is instead divided into smaller contiguous areas so there is still a possibility to use metal detectors on adjacent areas. If a charge is introduced, only one fee is charged if the area is geographically contiguous.

No analysis of alternative solutions to the matters to be dealt with effectively in accordance with the law cultural variety of purposes not discussed the proposal, there is an obvious deficiency. The county administrative boards could eg embrace Halland model, which means that some areas are already pre-judged possible to refer to the detector lard.

Consequences

The National Heritage Board has the right in its assessment that the number of applications will be reduced. Sveriges Metallsökarförening - SMF argue that the reduction will be significant, in any case, if the proposal is implemented in its entirety. It will bring a lot of other negative consequences. Questions that very barely addressed in the memorandum.

The illegal use of metal detectors will increase significantly. Today there are likely already illegal use of metal detectors. In most cases, however, there was certainly a lack of knowledge of the rules surrounding the use of metal detectors. If an individual would pay 700 SEK to get a permit to search for a key or a jewelry on a well-defined place appears in many cases is unlikely.

Other than that, it is in danger direction that the detector lard moving the limits of what is illegal and in a more proposed method using metal detectors, perhaps even on the registered ancient monuments.

The illegal use of metal detectors will also lead to archaeological finds do not come to the knowledge society. Ancient finds which have been found illegally will not be notified.

Riksantikvarieämbetes proposals will mean an increase in the illegal use of metal detectors, since fewer detector lard will seek permission. The investigation that preceded the new legislation states the following;

"The inquiry has found that the looting problem entails a need for highly regulated use of metal detectors in places fornläm devices. This particular capability to detect and prosecute illegal use is very limited. The risk of looters being detected must be presumed to decrease with increased legal use. There is therefore reason to consider also what the increased use and availability of metal detectors then leads to the possibility of action against crime. For the above reasons, the investigation determined that the ability to use or cause metal detectors in places fornlämnings-före-income must be severely limited. The proposed regulation does not mean a total ban on the use of metal detectors in such places as long as the purpose is different than searching for ancient finds.

Increased opportunities for legal use of metal detectors could thus preventing archaeological heritage crime. For the bill to the cultural act also states that;

The proposal on the use of metal detectors shall not be permitted except by special permit is to combat and prevent looting of antiquities with the help of metal detectors.

It should be emphasized that the very purpose of the new legislation, therefore, is to combat looting. National Heritage Board's regulations and the current proposal's restriction is not disproportionate to the purpose of the law and will not help to protect antiquities against looting.

According to the liability provisions contained in the Cultural Heritage Act (1988: 950), the use of metal detectors without permission in practice a fine crime. There is no priority work that police and prosecutors are conducting today. Add to this that it is probable impunity to use metal detectors in places other than the registered ancient monuments, see above. The risk of a detektorist without permission would be caught and prosecuted is therefore small. The proposal will instead undermine respect for the law and it is actually a bigger problem in the longer term.

If the rule of law should retain its authority must be statutory harmonize with what generally can be perceived on fair and reasonable. Add to that the criticism that the European Commission put forward and unheeded by the National Heritage Board. How will the state be able to motivate its citizens to follow the parent's rules when even the state follow them ?! Faced with a possible increase in charges, the county administrative boards must expect to handle a large number of applications. Administrative courts will also get an increased workload. It will drain the authorities on the resources that could be used for other things. The current regulations, general guidelines and the proposal will affect the development and interest in the cultural environment. There is a societal benefit that there are talented and interested detector lard. Police authorities, Missing People, farmers, municipalities and others and individuals benefit from the resources detector lard possess. But above all saves detector lard objects located up to plow depth from completely destroyed. New monuments will be detected, providing new knowledge and also protected.

The introduction of a fee, will further damage the development of the cultural environment and reduce local interest in history. Now the administrative courts overwhelmed with cases in which the individual believes that the County Administrative Board's assessment is incorrect and its terms are unfair. The setting for metal detection by the European Commission expressed would instead contribute to a positive development of the cultural environment. There is great potential for greater cooperation between authorities and detector lard. Hobby Search with metal detector starts to become a social movement which promotes different cultural policy objectives. There are several ways to increase public interest in the local cultural environment. Sveriges Metallsökarförening - SMF have a structure where each county is represented by a single member, this is to build bridges and find new ways to local cooperation.

The value of all this has not been analyzed, in general lack the basic memorandum analyzes of risks, opportunities and alternative solutions.

With the hope that the National Heritage Board withdraws its proposal on the introduction of the application fee.

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