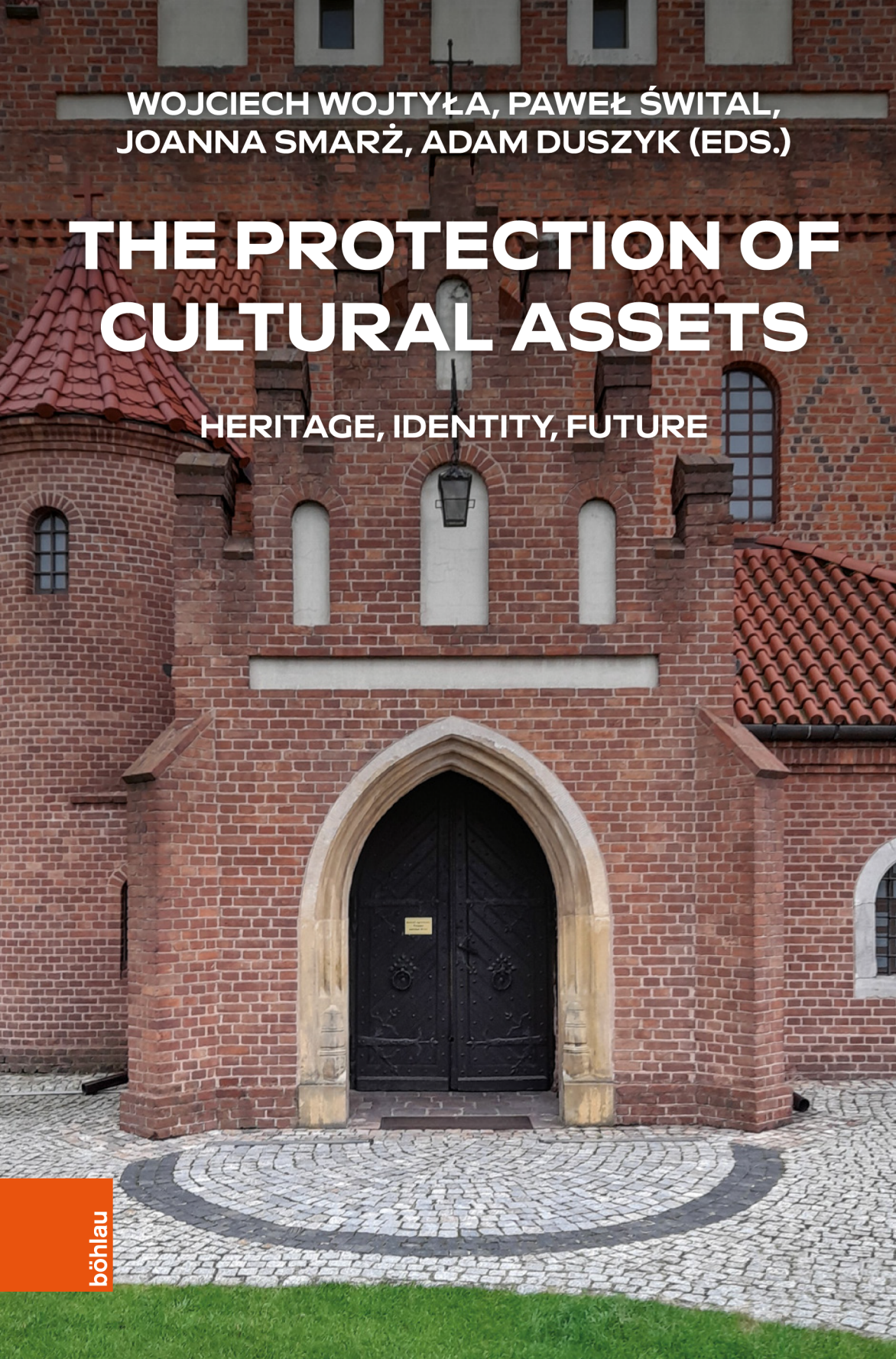




WOJCIECH WOJTYŁA, PAWEŁ ŚWITAL,
JOANNA SMARŻ, ADAM DUSZYK (EDS.)

THE PROTECTION OF CULTURAL ASSETS

HERITAGE, IDENTITY, FUTURE

The Protection of Cultural Assets

The Protection of Cultural Assets

Heritage, Identity, Future

Edited by

Wojciech Wojtyła

Paweł Śwital

Joanna Smarż

Adam Duszyk



BÖHLAU

Publication financed from the state budget under the programme of the Minister of Science and Higher Education entitled Science Vectors, project number WNM/SP/0109/2025/01, project funding amount PLN 33,600, total project value PLN 42,000.00.



Ministry of Science and Higher Education
Republic of Poland

Project financed from the state budget, granted by the Minister of Science and Higher Education as part of the Science Vectors programme, project no. WNM/SP/0109/2025/01, project funding amount PLN 33,600, total project value PLN 42,000.00.



Publishing reviewers:

Professor Wojciech Daszkiewicz (John Paul II Catholic University of Lublin);

Professor Anna Kosińska (University of Szczecin)

This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.

<https://creativecommons.org/licenses/by-nc/4.0>

This book is available as an open access publication via <https://www.vr-elibrary.de>

ISBN 978-3-412-53568-1

ISBN 978-3-412-53570-4 (eLibrary)

DOI <https://doi.org/10.7788/9783412535704>

Bibliographic information published by the Deutsche Nationalbibliothek

The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data are available on the Internet at <https://dnb.dnb.de>.

© 2026 the authors, published by Brill Deutschland GmbH, Robert-Bosch-Breite 10,
37079 Göttingen, Germany

Böhlau and Brill Deutschland GmbH are part of De Gruyter Brill.
www.degruyterbrill.com

Questions about General Product Safety Regulation: productsafety@degruyterbrill.com

Cover illustration: Saint Catherine of Alexandria Church and Bernardine Monastery in Radom (Poland),
photograph: Witia, CC BY-SA 4.0

Printing: Elanders Waiblingen, Waiblingen

Contents

Introduction 1

The Philosophical and Axiological Implications of Cultural Heritage

Culture as the Space for the Fulfilment of the Human Person and
Entrenchment of Universal Values – The Personalist Foundations of
Culture 9

Wojciech Wojtyła

High Culture in the Context of Preserving National Identity 21

Imelda Chłódna-Błach

Espace Muséal Gombrowicz in Vence as an Example of a Contemporary
Formula for the Preservation and Development of the Emigrant Polish
National Heritage 33

Anna Spólna

International Contexts in the Protection of Cultural Assets and National Heritage

The Protection of Cultural Property in the Face of the Military Conflict in
Ukraine – Selected Aspects 51

Anna Dąbrowska and Tomasz Dąbrowski

Protection of Cultural Heritage Sites in Ukraine and Poland
A Comparative Legal Analysis Using the Example of Religious Buildings:
The Wooden Churches (*Tserkvas*) of the Carpathian Region 69

Tetyana Karabin

The European Network of Regional Culinary Heritage as an Instrument of
Support for Regional Identities 83

Monika Żuchowska-Grzywacz

The Domestic Perspective on the Legal Protection of Historic Monuments and Cultural Heritage

An Evaluation of the Polish Historic Monument Protection Law After Its
Twenty Years in Force 95

Kamil Zeidler

The Duties and Competences of Local Authorities in the Protection of
Historic Real Estate in Poland 105

Helena Kisilowska

Preventive Building Code Regulations Concerning the Protection of Historic
Real Estate 117

Joanna Smarż

The Expropriation of Historic Real Estate as an Instance of Realising the
Constitutional Principle of National Heritage Protection 131

Małgorzata Pracka

The Legal Protection of Exhibits Loaned from Abroad 147

Emilia Gulińska

The Legal Conditions of Searching for Archaeological Monuments 159

Piotr Krzyżanowski

The Penal-Law Protection of Historic Monuments in Poland – An Analysis of
Selected Aspects 173

Agnieszka Łozińska-Piekarska

The Penal-Law Protection of Historic Monuments at the Time of Poland's
Partitions 189

Bartłomiej Składanek

Preservation of Cultural Heritage in Local Communities

The Role of UNESCO in Safeguarding Cultural Heritage in Local
Communities 205

Katarzyna Głębicka-Auleytner

Country Housewives' Associations as Decentralised Safeguards of Intangible Cultural Heritage 221

Agata Barczewska-Dziobek

The Right to Cultivate Customs and the Protection of Intangible Cultural Heritage 233

Miroslaw Kopeć

Challenges in the Protection of Cultural Institutions and Supporting Their Accessibility

Digitalisation of Cultural Assets as a Determinant of Cultural Heritage Protection

Digital Access to Knowledge About Historic Monuments: Technological Challenges and Cybersecurity 247

Dominika Skoczylas

Accessibility of Cultural Institutions to Person with Special Needs 261

Paweł Śwital

The Specific Nature of Employment with Entities Engaged in Cultural Activities 271

Mariusz Wieczorek

Funding of Cultural Institutions in Poland 281

Piotr Kobylski

List of Contributors 293

Introduction

The notion of culture is ambiguous. It comes from the Latin *colo, ere*, originally used to denote soil cultivation. Following Marcus Tullius Cicero (d. 43 BCE), it began to refer to humans and ‘the cultivation of their spirit’. This was supposed to take effect by means of science, particularly philosophy, described as *animi cultura*. Although culture has often been defined since Cicero, its core meaning denotes both the way of man’s being in the world and all of his creations. They are all the expressions of knowledge man has acquired and explored over the ages, and of his will to continue improving the existing world with his endeavours. Art, literature, science, architecture – these are but some of the forms through which man and the culture he creates are expressed. They all make up the spiritual substance of each nation that determines its historic identity (Buttiglione 1988, 94–120).

The role of culture in determining a nation’s sovereignty and identity was discussed by John Paul II in his speech at the UNESCO offices in Paris on 2 June 1980: ‘Nation (...) is this great human community connected by various bonds, first of all with culture. Nation exists “on culture” and “for culture”. (...) I am a son of a Nation that has survived the most terrible of historical experiences, sentenced to death by its neighbours a number of times – yet it has remained alive and remained itself. It has preserved its identity and sovereignty as a Nation under partitions and occupations – relying not on other means of physical power but on its own culture. (...) There is a core sovereignty of a society expressed in a Nation’s culture’ (Giovanni Paolo II 1980). These words make universal sense. They may be referred to any nation and the culture it creates, a culture that constitutes its spiritual heritage.

The contemporary world is characterised by enormous cultural pluralism. The extensive and well-developed cultural niche where humans the world around live is positioned between two poles – of universality and particularism. This may generate tensions, since either of the dimensions may aim to gain an advantage. Exploring other cultures while preserving an adequately critical attitude and awareness of the values and limitations of one’s own culture is an opportunity for a balanced and even creative experience of that tension. A dialogue may then reveal a shared cultural heritage of the whole of humankind that not only individuals, but also entire nations can partake of (Jan Paweł II, 2001).

The Protection of Cultural Assets: Heritage, Identity, Future, edited by Wojciech Wojtyła, Paweł Śwital, Joanna Smarż and Adam Duszyk, is the result of cooperation between authors representing the academic communities in

Poland and Ukraine. It contains twenty-one papers in a range of academic fields, including philosophy, and legal and literary theory. Some authors divide their time between research, teaching, and legal practice, some work for public cultural institutions. This variety of perspectives on cultural asset protection presents the subject matter of this monograph in various contexts, while expanding the view of the range of challenges and threats facing states and nations, especially in Europe, in connection with processes such as migration or the war in Ukraine.

The subject matter discussed in the individual chapters centres around the guiding topic of the monograph. The broad range of issues addressed by the authors is divided into five sections. The texts collected in this monograph form a coherent whole. The methods of research are proper to humanities and social sciences. Analytical and synthetic methods prevail in humanistic parts, whereas the dogmatic legal, legal functional, and comparatist legal methods are dominant in social studies.

The first part of the volume, entitled 'The Philosophical and Axiological Implications of Cultural Heritage', opens with Wojciech Wojtyła's paper 'Culture as the Space for the Fulfilment of the Human Person and Entrenchment of Universal Values – The Personalist Foundations of Culture'. It is followed by Imelda Chłodna-Błach's 'High Culture in the Context of Preserving National Identity' and Anna Spólna's 'Espace Muséal Gombrowicz in Vence as an Example of a Contemporary Formula for the Preservation and Development of the Emigrant Polish National Heritage'.

The second part presents 'International Contexts in the Protection of Cultural Assets and National Heritage'. It consists of articles by Anna Dąbrowska and Tomasz Dąbrowski, 'The Protection of Cultural Property in the Face of the Military Conflict in Ukraine – Selected Aspects', Tetyana Karabin, 'Protection of Cultural Heritage Sites in Ukraine and Poland – A Comparative Legal Analysis Using the Example of Religious Buildings: The Wooden Churches (Tserkvas) of the Carpathian Region', and Monika Żuchowska-Grzywacz, 'The European Network of Regional Culinary Heritage as an Instrument of Support For Regional Identities'.

Part three, 'The Domestic Perspective on the Legal Protection of Historic Monuments and Cultural Heritage', contains eight studies. The first is Kamil Zeidler's 'An Evaluation of the Polish Historic Monument Protection Law After Its Twenty Years in Force', followed by Helena Kisilowska's 'The Duties and Competences of Local Authorities in the Protection of Historic Real Estate in Poland', Joanna Smarż's 'Preventive Building Code Regulations Concerning the Protection of Historic Real Estate', Małgorzata Pracka's 'The Expropriation of Historic Real Estate as an Instance of Realising the Constitutional Principle of National Heritage Protection', Emilia Gulińska's 'The Legal Protection of

Exhibits Loaned From Abroad', Piotr Krzyżanowski's 'The Legal Conditions of Searching for Archaeological Monuments', Agnieszka Łozińska-Piekarska's 'The Penal-Law Protection of Historic Monuments in Poland – An Analysis of Selected Aspects', and Bartłomiej Składanek's 'The Penal-Law Protection of Historic Monuments at the Time of Poland's Partitions'.

The fourth section is devoted to the preservation of cultural heritage in local communities. It contains texts authored by Katarzyna Głąbicka-Auleytner: 'The Role of UNESCO in Safeguarding Cultural Heritage in Local Communities', Agata Barczewska-Dziobek: 'Country Housewives' Associations as Decentralised Safeguards of Intangible Cultural Heritage', and Mirosław Kopeć: 'The Right to Cultivate Customs and the Protection of Intangible Cultural Heritage'.

The final part of the volume is entitled 'Challenges in the Protection of Cultural Institutions and Supporting Their Accessibility'. It includes investigations by Dominika Skoczylas: 'Digitalisation of Cultural Assets as a Determinant of Cultural Heritage Protection – Digital Access to Knowledge About Historic Monuments: Technological Challenges and Cybersecurity', Paweł Śwital: 'Accessibility of Cultural Institutions to People with Special Needs', Mariusz Wiczorek: 'The Specific Nature of Employment with Entities Engaged in Cultural Activities', and Piotr Kobylski: 'Funding of Cultural Institutions in Poland'.

These authors stress the significance of a range of areas and factors that make up the phenomenon of culture, and their role in sustaining and developing the identities of particular nations. Special emphasis is placed on the socio-humanistic function of culture, as well as its ties with fields such as law, security, and public finances. Since full justice cannot be done to the many themes raised by the individual authors, only a selection of issues addressed in this volume is outlined below.

When analysing the philosophical and axiological dimensions of culture, Wojciech Wojtyła argues that culture is a distinctive space for, and means of, humanising the person and the various forms of social life he creates. This occurs above all through the transmission and consolidation of universal values within particular nations. Imelda Chłodna-Błach likewise presents culture as a factor that both integrates and differentiates social groups. She stresses, however, that the integral development of the person should be the objective of every human community. High culture, which can be created and sustained only within a nation, is a pre-requisite for achieving such an objective.

In the context of the international protection of cultural assets and heritage, Anna Dąbrowska and Tomasz Dąbrowski consider challenges to the protection of cultural assets in Ukraine amid the ongoing military conflict triggered by Russian aggression. They emphasise that cultural assets, both tangible and

intangible, play a crucial role in shaping and reinforcing national identity and in preserving the cultural heritage of the Ukrainian nation.

Immoveable historic monuments are major testimonies to the culture and traditions of each nation; they should therefore become objects of particular interest and concern for legislative bodies. This is underscored by Joanna Smarż, who reviews Polish building regulations concerning the protection of, and care for, historic monuments. She believes that these laws should be sufficient to effectively prevent any adverse impacts on historic objects that may arise from conflicts between individual and public interests. Kamil Zeidler, in turn, stresses the need for constructive cooperation between public authorities and the actual users of monuments – their owners or holders. In his view, this should be realised as part of the idea of so-called discursive administration. This is a challenge for all parties involved.

Helena Kisilowska demonstrates that the effective protection of historic real estate and proper care for monuments require the expansion of the competences of local authorities. She argues that appropriate legal instruments must be established to clearly define the object of protection, as well as its principles, objectives, and methods, together with the rights and duties of both users and local administrations.

The right to cultivate traditions is a fundamental right of national and ethnic minorities, guaranteed by both the Polish Constitution and international law. Mirosław Kopeć draws attention to this important point. Monika Żuchowska-Grzywacz, analysing the role of the European Network of Culinary Heritage, argues that encouraging the discovery and promotion of local flavours, culinary techniques, and regional products is an effective means of supporting regional identities. The need to protect intangible cultural heritage is emphasised by Agata Barczewska-Dziobek. She focuses on Country Housewives' Associations, women's organisations that have become part of the tradition of civic activity in rural areas. They exemplify the subsidiary participation of societal entities in the identification and protection of cultural heritage. She describes the activities of these associations and their role within Poland's system of cultural heritage protection.

The legal status of cultural institutions and the stability of their funding are addressed by Piotr Kobyłski. He emphasises in particular the need for a long-term financial strategy that would enable institution directors to plan ahead and thus determine subsidies appropriate to their activities. In this way, funding for artistic and statutory activities would be guaranteed regardless of any liabilities or financial deficits incurred by a cultural institution.

Cultural institutions face a range of challenges. Dominika Skoczylas notes that institutions engaged in the protection of cultural heritage are increasingly turning to information and communication technologies in order to improve

access to information on cultural assets. Digital transformation points towards changes that expand access to information about historic monuments, while also defining innovative and diverse tools to be used for this purpose, including advanced digitalisation and artificial intelligence systems. Another problem is identified by Paweł Śwital, who sees providing access for persons with special needs as the key challenge currently facing cultural institutions. This is all the more important since the obligations imposed by the Polish legislation in this respect help to ensure equal opportunities for all users to enjoy the offerings of cultural institutions.

The editors of *The Protection of Cultural Assets: Heritage, Identity, Future* hope that it will prove useful both to the many groups engaged in broadly defined culture and to those interested in its subject matter. It may also become a stimulus for a wider-ranging discussion and for the search for new solutions in the protection of cultural heritage.

The materials for the volume were translated into English and reviewed thanks to the excellent cooperation between the Faculty of Law and Administration of the Kazimierz Pułaski University of Radom and the Jacek Malczewski Museum in Radom. The funds for this purpose came from an earmarked grant from the Local Government of the Mazovian Voivodship. The editors of the volume *The Protection of Cultural Assets: Heritage, Identity, Future* would like to express their sincere thanks for the cooperation and support provided to the project by Mr Leszek Ruszczyk, Director of the Jacek Malczewski Museum in Radom.

Wojciech Wojtyła,
Paweł Śwital,
Joanna Smarż,
Adam Duszyk

References

- Buttiglione, Rocco. *Suwerenność narodu przez kulturę*, tr. by Karol Klauza, Urszula Kozłowska, *Ethos*, R.1, no 4 (1988): 94–104.
- Giovanni Paolo II, Allocuzione all'Organizzazione delle Nazioni Unite per l'Educazione, la Scienza e la Cultura, L'integrale umanità dell'uomo si esprime nella cultura, Parigi 02.06.1980, no 6, *Insegnamenti di Giovanni Paolo II* [Città del Vaticano] III/1/1980.
- Jan Paweł II, *Dialog między kulturami drogą do cywilizacji miłości i pokoju* (Orędzie na Światowy Dzień Pokoju, podpisane 8 XII), *ORpol.* 22 (2001) nr 2: 24–29.

The Philosophical and Axiological Implications of Cultural Heritage



Culture as the Space for the Fulfilment of the Human Person and Entrenchment of Universal Values – The Personalist Foundations of Culture

Wojciech Wojtyła

Abstract The issue of culture is addressed in the light of Neo-Thomistic personalism based on classical philosophy. Culture, a rationalisation of the existing natural world, is both a space of and means to humanising man and the variety of public life forms he creates. This primarily takes place by transferring and entrenching universal values in the particular nations.

Keywords human nature – nation – globalisation

1 Introduction

‘Human nature consists in a ceaseless endeavour to overcome the boundaries of animality inherent in man and to rise above it with humanity and man’s role as the creator of values. Without this mission and this endeavour of rising above himself, man collapses back into his pure animality, which is inevitable death’ (Ingarden 2009, 25), as stated by Roman Ingarden. The Cracow-based philosopher, aware of the difficulties of defining the deepest essence of human nature, points to man’s special ability to overcome his biological condition for a new, different world – the world of culture, the space for possessing, knowing, and realising values, without which, the Polish phenomenologist claims, ‘man is profoundly unhappy’ (ibidem, 23).

Although culture is understood in a variety of ways, it is only created by man. It is indeed part of his very essence distinguishing him from the rest of the visible world. Each cultural creation is a specific expression of human genius and creative abilities. Culture, man’s work, is at the same time what makes man more human. By creating the world of culture, man gives a proper shape to his humanity – the first and fundamental value he discovers and realises. Discovering the value of his humanity, he discovers more values, absolute in their immanent quality, i.e. moral and aesthetic values. By means of the diverse areas of culture, man creates a proper space for revealing and incorporating these values, in whose services he is better able to realise the ideal of *humanitas*, an ideal he is as if tasked with by fate.

This paper intends to present how the relationship between man and culture is seen in the personalist framework. I begin with the conviction man is not only the sole creator of culture, but also its ontic subject and purpose. Culture is treated here as a set of values serving man's comprehensive development in his personal dimension. The so-called higher values hold a central position in this set.

This discussion is principally undertaken for reference purposes. Given the number of personalisms, it should be noted that it forms part of the Neo-Thomistic personalism grounded in classical philosophy. The author believes that the personalist paradigm, built on the foundations of realist metaphysics, helps to develop a comprehensive and universal theory of man as a personal being and, consequently, a theory of culture, and of the mutual connections and relationships between these two theories.

2 The Philosophical Concept of Culture

Culture experts stress the complexity and ambiguity of the notion of culture. The phenomenon of culture may be viewed from the perspective of diverse fields of knowledge. Culture is expressed in a variety of forms, such as the arts, literature, and science. There are multiple definitions of culture, and new ones continue to be added. The term 'culture' is used both in everyday language and in scholarly discourse. It occurs in a range of linguistic contexts in combination with various adjectives. Phrases like 'spiritual culture', 'material culture', 'individual culture', 'social culture', 'primitive culture', 'high culture', and 'folk culture' are known (Krąpiec 1990, 201). The various aspects from which the reality of culture can be explored are reflected in the number of academic disciplines that deal with culture, including the history of culture, cultural anthropology, psychology of culture, the theology of culture, and many others.

The variety of ways in which culture is understood presupposes a basic conception. In the search for the most original and highest notion of culture – the foundation and source of other theories – one must refer to philosophy (Krąpiec, Jaroszyński 2005, 136; Krąpiec 2008, 61). Realist (classical) philosophy offers important inspiration, since it sets itself the key task of explicating reality in cognitive and sapiential terms. Its understanding of culture and its deepest foundations is closely connected with the understanding and affirmation of the objectively existing, pluralist reality, as well as of man, especially his personal structure and the mechanisms of cognition and action (Daszkiewicz 2010, 44–45). A special role in this explication is played by the so-called theory of aspect, proposed by Aristotle: the identification of three

chief orders of man's rational life that help to order cognitive activities and actions in the external world. These are θεωρία (*theoria*), or scientific and contemplative cognition according to the criterion of truth; πράξις (*praxis*), or moral cognition, with good as its measure and criterion; and ποίησις-τέχνη (*poiesis-technē*), or creation (art), with beauty as its element (Aristoteles 1996, 1026a). A philosophical analysis of both the phenomenon of culture and its works must refer back to this order of cognition.

2.1 Culture as an Intellectualisation of Nature

Classical philosophy is an attempt at a natural exploration of the real world in its existence and ontic structure. In a common-sense cognitive confrontation with the external world, man spontaneously discovers and recognises the necessity of controlling and cultivating 'wild', 'raw' nature. Such control and cultivation presuppose the work of human reason, which renders nature, as it were, 'rationalised' (Krapiec 1990, 201–202). This sense of culture is suggested by its original historical intuition. The Latin *colo, colere* means 'to cultivate' and initially related to farming (*agricultura*). Since Marcus Tullius Cicero (d. 43 BCE), *cultura* began to be used metonymically to denote the cultivation of man and his spirit, that is, the ennoblement of the human mind, largely by philosophical means [ibidem 2008, 9]¹. This understanding of *cultura* was strongly influenced by what ancient Greeks termed παιδεία (*paideia*), namely the all-round education of a young person through the development and reinforcement of their perfections, or virtues (Jaroszyński 1998, 15).

Since culture is the cultivation of the existing natural world and of the human mind, answering the question of what this cultivation is and what its essence is constitutes the next step towards a conscious explanation of culture. These are questions concerning the most fundamental aspects that define the metaphysical understanding of culture.

A philosophical explication of the phenomenon of culture must begin by identifying its sources, that is, man's personal qualities and his conscious and voluntary actions (Daszkiewicz 2010, 51–52). Works of culture express human cognition of the natural world, including man himself, as well as his creative

1 This understanding of *cultura* was introduced by Marcus Tullius Cicero in *Tusculanae disputationes*, where he disputed the views of Actius, writing: *Nam ut agri non omnes frugiferi sunt, qui coluntur [...] sic animi non omnes culti fructum ferunt. Atque, ut in eodem simili verser, ut ager quamvis fertilis sine cultura fructuosus esse non potest, sic sine doctrina animus: ita est utraque res sine altera debilis. Cultura autem animi philosophia est; haec extrahit vitia radicatus et praeparat animos ad satus accipiendos eaque mandatus et, ut ita dicam, quae adulta fructos uberrimos ferant*, Tusc. Disp 11,5.

needs and capacities. They are also expressions of the human will, through which man improves this world while tending towards the optimal perfection of his own rational and free nature (Kiereś 2013, 10). As the essential manifestation of man as man – as *animal rationale* – it follows, Mieczysław A. Krąpiec writes, that ‘this is the interiorisation itself, by means of human cognition, of the existing nature, thus, its first *intellectualisation* in the human fashion and the first cultural fact. Whatever is human and shows in human action is a result of the fact of cognitive interiorising (or intellectualisation) of nature, of the world, of reality’ (Krąpiec 2008, 6). In this way, man appears in all cultural phenomena as one who reflects both on his own thinking and on its resulting developments, expressed in a wide gamut of cultural creations, from the simplest to the most refined works of broadly defined art and engineering (Krąpiec 1999, 380). All cultural facts share their origins in man: his rational cognition as an interiorisation of existing reality, followed by a range of actions undertaken in relation to that reality (ibidem 2008, 62).

To introduce some order into the many strands of human cultural activity, three major aspects should be identified that account for its distinctive and dynamic nature. These are:

1. culture as an activity, that is, the rationalisation and humanisation of the existing world;
2. culture as man's creation, that is, all his intentional works;
3. culture as a quality of the human spirit (Kiereś 2013, 10).

These three aspects condition and complement one another. By defining the areas of man's work, they help to distinguish between spiritual and material culture, as well as between individual and social culture, known as civilisation, that is, a method of organising collective life (Koneczny 1999, 35).

Immanently, four principal criteria of culture, and their corresponding fields, are distinguished: truth (science), good (morality), beauty (art), and religion (sacredness) (Kiereś 2013, 10). These are also the primary and most fundamental domains of culture. Culture is a constant companion to man: wherever man appears, culture arises too. The cultures created since the origins of humanity are not, however, of equal quality. There are high, primitive, and even barbarous cultures. As we learn from the discoveries of the ancient Greeks, the perfection of a culture is determined by the level of awareness and development of its four basic constituent spheres (ibidem 2006, 21).

2.2 Culture as a Remedy for Nature's Deficiencies

In the classical sense, the essence of culture is the intellectualisation of the natural world, as well as the rational remedying of its deficiencies. Reason is

necessary to the process of improving nature's deficiencies, since it is only by relying on reason that man is capable of recognising those deficiencies and the purpose for which nature must be supported through the selection of appropriate means (Jaroszyński 2008, 366). Thus, the classical notion of culture is founded on its connection to nature, which is transformed and improved by man, who leaves his rational mark on it, as on a material (Krapiec 2005, 236).

Nature has a number of meanings. Originally, it is derived from the Latin *nasci*, 'to be born'. Nature is thus everything that gives birth of itself or contains such powers. In the case of human beings, giving birth to another human being is the only activity that belongs to the natural order. Nature is also everything that makes up the material world – the universe – or everything that man encounters within himself and in the external world, termed φύσις (*physis*) in Greek (Kiereś 2013, 18–19). In its most fundamental sense, nature is the principle of all motion and change. It manifests itself in the dynamic developments associated with the emergence of beings, the modes of their existence and actions, and, finally, their disintegration and death (ibidem, 19).

In natural terms, human nature, like that of animals, expresses itself in the functions of particular body organs and senses. What constitutes man's metaphysical nature, and what distinguishes it from the animal nature, is reason, which is expected to guide human conduct rather than instinct (Jaroszyński 2008, 366). The human capacity for transcending oneself and the whole world of nature manifests itself in acts of rational and free agency, which form the foundation of all cultural activity. Human nature must therefore be approached holistically: not only at the level of biological life, but also in terms of what constitutes its unchangeable, metaphysical essence, understood as the source of spiritual life – namely, the human ability to know truth, good, beauty, and other values, to choose them, and to be guided by them in life (Bednarski 2000, 77).

Genus humanum arte et ratione vivit ('humankind lives by art and reason'), Thomas Aquinas claimed. These words have a universal human resonance. The capacity for creation and rational life is shared by all human beings. Since a person is what reason makes him, the duty to live in accordance with reason is incumbent on him at all times. This entails the obligation to understand and shape one's own cultural niche in such a way that, through the richness of its spheres and creations, one grows in one's personal dimension. For this to happen, we must learn about the cultural achievements of past generations, as well as about the defects that have led to crises, or cultural regressions (Kiereś 2013, 11–12). A specific error always lies at the root of each. Ignorance of, forgetting, or insufficient knowledge of one's own nation's cultural heritage are among the most dangerous errors. In practice, this gives rise not only to contempt for

native culture, but also to a cultural vacuum, which is exceptionally dangerous to the person himself (*ibidem*, 12).

3 Man as the Subject and Object of Culture

The 'culturality of culture' is determined by its origins in the human person. As has already been noted, however, cultures are not equal, nor is everything created by man culture-forming. Concentration camps constituted a denial of culture. Whatever in any way demeans human dignity, belittles the person, or depraves man as man denies culture. Manifestations of excessive consumerism, arising from the neglect of higher human needs, may serve as an example. As R. Ingarden wrote: 'If our works are highly valuable, beautiful, spiritually rich, noble, and wise, we ourselves become better through them; if, on the other hand, they bear traces of evil, ugliness, weakness, disease, or madness, we become worse, poorer, weaker, and sick under their influence' (Ingarden 2009, 36).

Man's relationship with the world of culture is nearly ontic. The multifarious creations with which he is in contact every day affect him and shape his thinking and behaviour. In a sense, man becomes a 'child' of his own works (*ibidem*, 35). Thus, he is not only the maker and creator of cultural facts and works in all their multiplicity and formal richness, but also their subject and object. His life and development are the fundamental good of culture.

This anthropological and subjective dimension of culture is emphasised by Karol Wojtyła. The Cracow-based philosopher wrote: 'The word "culture" is one of those most closely connected with man, defining his earthly existence and, in a way, pointing towards his very essence. Man is the one who creates and needs culture, who creates himself through culture. Culture is a set of facts in which man continues to express himself anew more than in anything else, for himself and for others. The works of culture that outlive man bear witness to him. They are a testimony to spiritual life, and the human spirit lives not only by controlling matter, but also living within itself on contents available and meaningful only to itself. Thus, it lives on truth, good, and beauty – and is capable of expressing this inner life outwardly and objectifying it in its works. Therefore, man as the creator of culture bears a special witness to humanity' (Wojtyła 1964, 1154).

Culture, as man's work, is also for man. All cultural creations are secondary: they are means to an end, namely man and his all-round development. Man is the supreme value of culture – what he is, and what he is to become, as a person. Culture is all the more valuable the more fully it expresses the human

person and the more it contributes to the formation and growth of personal life.

This understanding of the phenomenon of culture – its objective and meaning – implies a specific understanding of man himself, since he becomes the object of action insofar as the rank of good he constitutes, as a being among other beings, is recognised. In the light of personalism grounded in realist philosophy, man is interpreted as a person, that is, the only being that is a good in and for itself within nature: a being that exists in itself as a subject and that, in itself, constitutes the object of its own actions (Krapiec, 2008, 90). The idea was aptly expressed by Immanuel Kant, who wrote: ‘Man and every rational being in general exists as an end in itself, not merely as a means to be used in any manner by any will; he must always, in all his actions that refer both to himself and to other rational beings, be regarded at the same time as an end’ (Kant 2005, 54)².

The human person is also a potential personality, that is, one that, through a variety of rational–volitional acts, develops, builds, and brings to fulfilment the potentialities it possesses by virtue of human nature (Krapiec 1998, 26).

Knowing the person's ontic and axiological rank among other beings gives rise to the duty to affirm the person for its own sake in culture and through culture. The very fact of being a person also requires the effort of living up to what one is (Wojtyła 2020, 180). By squandering his powers on creating worthless things, or wasting time in the pursuit of apparent values, man in a sense betrays his humanity (Ingarden 2009, 65). Broadly defined culture is to assist him, through its creations, in fulfilling the fundamental task that everyone faces: to become what he should be as a person, that is, to realise his full humanity. In this sense, culture has a profoundly moral and pedagogical dimension.

4 Between National and Globalised Culture – Transfer of Values In and via Culture

The earth and history are two objective factors to which everyone is subject. Once made ‘one's own’, they embed individuals in national communities, in which time and space are, as it were, ‘humanised’, with the earth becoming a shared space, and history, a shared time (Stróżewski 1981, 291). The realisation and transmission of values become constitutive goals of the resulting human

2 The original title: *Grundlegung zur Metaphisik der Sitten*, first published in 1797.

environment. Over time, human collectives have developed their own sets of values, which have become the foundations of the identities of both individuals and groups. Although it is difficult to give a clear answer to the question of what those values were, a basic set – characteristic of a given historical era – has always been in place. It has expressed the need, or even necessity, of having and realising values characteristic of human nature (Ingarden 2009, 22–23).

This is how Władysław Stróżewski described the different categories of values that may be distinguished: ‘There are values everyone can and should realise individually. The obligation they impose is characteristic of individual human life. There are values that man can and should realise as a social being; these entail obligations not only to himself but also to his family and immediate environment. Finally, there are values that can be realised only by a specific community within a specific environment. They transcend individual particularities, and their defining feature is that can be implemented only through the efforts of a particular collective’ (Stróżewski 1981, 293).

The nation plays a special role in the process of developing values and, thereby, in the creation of culture. This was emphasised by John Paul II in his speech at the UNESCO headquarters in Paris on 2 June 1980, when he stated: ‘The nation is this great human community connected by various bonds, first and foremost by culture. The nation exists through *culture*. For this reason, it is the great educator in *being more fully* in the community, whose history is longer than of any individual [...]’³. There is a variety of concepts of the nation and its foundation. In cultural terms, the nation is a spiritual unity strengthened by a shared past, as well as by the present and the future. The national community serves as a medium of such important cultural creations as language, tradition, customs, law, religion, and ethnic awareness. All of these play a fundamental role in reinforcing the spiritual substance of the nation, which constitutes its identity and vitality. Their acceptance additionally shapes the spiritual reality known as the native land (Stróżewski 2002, 222).

The issues of patriotism and the challenges of cultural globalisation are important. In its core meaning, patriotism is love of one’s native land. The notion is often confused with nationalism. The criterion of values and their proper hierarchy are crucial for understanding the essence of genuine

3 Giovanni Paolo II, *Un integrale umanità dell'uomo si esprime nella cultura*, Insegnamenti di Giovanni Paolo II [Citta del Vaticano] III (1980), 1, pp. 1636–1655; the Polish text: Jan Paweł II. “W imię przyszłości kultury. Przemówienie w siedzibie UNESCO, Paryż, 2 czerwca 1980 r.” in *Dzieła zebrane. T. X: Homilie i przemówienia z pielgrzymek – Europa, cz. 2: Francja, Hiszpania, Portugalia, Kraje Beneluksu*, ed. by P. Ptasznik, M. Mokrzycki, Z. J. Kijas et al., Kraków: Wydawnictwo M, 2008, 104.

patriotism. The patriotism that, after W. Stróżewski, may be called 'universal' – that is, one that acknowledges other nations' right to love their own lands – is founded on axiological objectivism, which explains the general relevance of values. By recognising that values exist objectively, one must also recognise that they are, as it were, 'given' to be realised. Every land is to be the natural environment for their discovery and realisation. In this way, Stróżewski writes, 'patriotism consists in taking the responsibility for one's land becoming a carrier of values, an environment saturated with them and allowing for their continued cultivation' (Stróżewski 1981, 298). This is the shared objective of all native lands. Although their populations differ in national characteristics, history, and traditions – sometimes substantially – this diversity is not contrary to universality; rather, it is a prerequisite for it. Here, universality denotes a unity founded on multiple traditions and cultures (*ibidem*, 295).

Patriotism seen as the love of absolute, universally valid values will never turn into nationalism, chauvinism, or xenophobia. Nor will it come into conflict with the patriotisms of other nations; on the contrary, these will together form an overarching and harmonious whole, based on far broader foundations (*ibidem*, 214). By their very nature, values are destined to be shared by as many nations as possible (*ibidem*, 295). 'The point is,' Stróżewski continues, 'to bring about the realisation of supreme values in the here and now. This is so for two reasons: not only to enrich, but in fact to create one's own culture and one's own good, thereby elevating one's specific characteristics to the rank of universal human values, making them one's own, and giving them back to human-kind' (*ibidem*). Love of values and responsibility for their realisation constitute the proper attitude towards one's own land.

Patriotism is not opposed to universalism. The value of national cultures is not opposed to the values of cultural pluralism. Cultural globalisation, like economic globalisation, is neither good nor bad *a priori*, but will be what people make of it⁴. Through intercultural dialogue and the exchange of what is best in cultures, it may become an opportunity for development and a noble expansion of each national culture (*ibidem*, 295ff). Each nation can make its unique contribution to the world's cultural heritage, provided there is a balanced experience of the tension between particular and universal realities and a skilful exploration of its most valuable elements.

4 Cf. Jan Paweł II, "Globalizacja i etyka. Do uczestników VII Sesji Plenarnej Papieskiej Akademii Nauk Społecznych", *L'Osservatore Romano Polish edition*, 22 (2001), no. 6: 42.

5 Conclusion

The phenomenon of culture is extraordinarily complex, encompassing historical, social, sociological, philosophical, theological, and other dimensions. In its original sense, culture is a way and a space of being and expression for the human person as such. Within the framework of philosophical realism, which forms the foundation of personalism, culture is understood as the rationalisation and cultivation of the existing natural world. Man, as a personal being, is the creator of culture, as well as its ontic subject and object.

In the personalist approach, which emphasises the anthropological, moral, and axiological dimensions of culture, culture is defined as everything that elevates human nature. Culture reveals its true value and meaning when, through its multifarious creations, it becomes a means of affirming and promoting the person. The personalisation of human life on earth – so that the human person may develop and improve in all the dimensions of existence – is among the crucial objectives and functions of culture. This takes place through universal values that are discovered and transmitted from generation to generation. Culture is thus, above all, about the human person, who is called to become more fully human, more fully a person, within a community of others.

References

- Arystoteles. *Metafizyka*, vol. 1–2, tr. by Tadeusz Żeleźnik, ed. by Mieczysław Albert Krąpiec and Andrzej Maryniarczyk. Lublin: Redakcja Wydawnicza KUL, 1996.
- Bednarski, Feliks. *Teologia kultury*. Kraków: Wydawnictwo M, 2000.
- Daszkiewicz, Wojciech. "Podstawowe rozumienie kultury – ujęcie filozoficzne". *Roczniki Kulturoznawcze*, vol. 1: 43–64, 2010.
- Ingarden, Roman. *Książeczka o człowieku*. Kraków: Wydawnictwo Literackie, 2009.
- Jaroszyński, Piotr. "Kultura i cywilizacja. Od Cycerona do Koniecznego". *Człowiek w kulturze*, no. 10: 13–29, 1998.
- Jaroszyński, Piotr. *Człowiek i nauka*. Lublin: Polskie Towarzystwo Tomasza z Akwinu, 2008.
- Kant, Immanuel. *Ugruntowanie metafizyki moralności*, tr. by Paweł Zarychta. Kraków: Wydawnictwo Zielona Sowa, 2005.
- Kiereś, Henryk. *Człowiek i sztuka*. Lublin: Polskie Towarzystwo Tomasza z Akwinu, 2006.
- Kiereś, Henryk. *Sztuka w kulturze*. Lublin: Polskie Towarzystwo Tomasza z Akwinu, 2013.

- Koneczny, Feliks. *Prawa dziejowe*. Komorów, 1999.
- Krąpiec, Mieczysław, Albert. *Człowiek w kulturze*, Rzym: Polski Instytut Kultury Chrześcijańskiej. Fundacja Jana Pawła II. Warszawa: Pallotinum II, 1990.
- Krąpiec, Mieczysław, Albert. *Człowiek – kultura – Uniwersytet*, in *Dzieła*. vol. XII. Lublin: Redakcja Wydawnicza KUL, 1998.
- Krąpiec, Mieczysław, Albert. *Odzyskać świat realny*, in *Dzieła*. Vol. XXIII. Lublin: Redakcja Wydawnictw KUL, 1999.
- Krąpiec, Mieczysław, Albert. *Ja-człowiek*. Lublin: Wydawnictwo KUL, 2005.
- Krąpiec, Mieczysław, Albert and Jaroszyński, Piotr. "Kultura", in *Powszechna Encyklopedia Filozofii*, ed. by Andrzej Maryniarczyk. vol. 6: 136. Lublin: Polskie Towarzystwo Tomasza z Akwinu, 2005.
- Krąpiec, Mieczysław, Albert. *Człowiek i kultura*. Lublin: Polskie Towarzystwo Tomasza z Akwinu, 2008.
- Marcus Tullius Cicero. *Tusculanae Disputationes*, Max Pohlenz. Leipzig: Teubner Verlag, 1918.
- Stróżewski, Władysław. *Istnienie i wartość*. Kraków: Wydawnictwo Znak, 1981.
- Stróżewski, Władysław. *O wielkości. Szkice z filozofii człowieka*. Kraków: Wydawnictwo Znak, 2002.
- Wojtyła, Karol. "Chrześcijanin a kultura". *Znak* R. XIV no. 10 (1964): 1153–1157.
- Wojtyła, Wojciech. *Osoba, społeczność, demokracja. W poszukiwaniu personalistycznych podstaw władzy społecznej*. Lublin: Towarzystwo Naukowe KUL, 2020.

High Culture in the Context of Preserving National Identity

Imelda Chłodna-Blach

Abstract People have always created a variety of communities, living and remaining together. Certain factors both integrate and distinguish them from other social groups. Within such communities, people undertake joint actions to attain shared goods. This article will consider what makes people feel united and responsible for their shared objectives. The discussion is conducted in a philosophical context, according to which the need to form larger communities is part of human nature. It will be shown that comprehensive human development, responding to natural inclinations, should be the objective of every community. To this end, high culture is necessary – a culture that can be created and sustained only within a nation.

Keywords culture – proto-national populations – family – lineage – tribe – people – nation – state – high culture – national culture – identity – tradition

1 Nation as the Space of Personal Human Development

General experience shows that people have long formed a variety of communities in which they live and remain together. Certain factors can be identified that both integrate communities and distinguish them from other social groups. Within such communities, people undertake joint actions towards the same, or a shared, good. This article addresses the question of what unites such people: what gives rise to a sense of community and to responsibility for the good they realise together?

Philosophy teaches us that the need to form greater communities is part of a person's nature. The social context is important to human life and development. The Greeks noted that man would neither survive nor develop without it. Aristotle (384–322 BCE) wrote that man is a social creature and needs others in order to live (Aristotle 1996, 272, 1169b).

Various forms of human population have evolved over time. The first stage of man's social development is the family: a community of parents and children that cares for and secures the everyday life of its members, both materially and spiritually. The family is the community into which one is born, in which one takes one's first steps, and in which one is brought up. This community is

too small, however, for man to be able to develop fully. The next community is lineage, constituted by blood bonds; it typically consists of a number of families. A further form is the tribe, an association of lineage groups. A tribe traces its descent to a common, often legendary ancestor. What is characteristic of a tribe is that it inhabits a given territory and has a relatively homogeneous social organisation (it should be remembered the Polish nation was formed by diverse Western Slavic tribes: the Polans, Vistulans, and Silesians, and later the Mazovians, Lendians, and Dulebs). Associations of related tribes gives rise to a people. This form of human population is founded on a shared language, culture, region, and origin (Tarasiewicz 2003, 28–43).

The above stages of social development – the so-called proto-national populations (family, lineage, tribe, and people) – preceded the original form of human community, namely the nation. None of them, however, provides sufficient resources for development in all domains of culture. It is only the nation that possesses them harmoniously, at a high level of knowledge, skills, and morality.

Thus, the full development of human personality takes place only at this stage of human populations: the nation. The creation of the Latin civilisation provided the optimal context and niche for man's development. As Feliks Koneczny wrote: 'Nationality is the supreme circle in the historical procession that begins with lineage, the highest civilisational commonalty' (Koneczny 1996, 7). It is the nation that guarantees all the means of personal development and its appropriate 'level', sustained through tradition.

The progress of social life is gradual, moving from family to nation. It forms ever wider circles, enabling increasingly complete personal development. It is grounded in the natural human inclination to associate in larger communities. John Paul II pointed out: 'A shared nature makes people feel who they are – members of a single big family. Due to the particular historical dimension of this nature, however, people are also inevitably linked with closer ties to specific communities: above all, to family, then community groups, finally an entire ethnic and cultural community, not incidentally known as *nation*, bringing to mind birth, or nascence, otherwise referred to as *fatherland*, which points to the family reality. Thus, human existence passes between two poles – universal and particular – which remain in a vital tension; that tension is inevitable, yet becomes especially fruitful if lived in peace and equilibrium' (John Paul II 1997, 46). A nation is founded on a conviction of shared origin, but is a population based not so much on blood ties as on a similarity of language, tradition, and other elements of culture (Kwaśniewski 1996, 64–65). It should be noted at this point that national culture is transmitted via language. Language is the internal factor in its permanence and development, the medium of a

nation's cultural heritage, which can be fully expressed in a native speech. This becomes especially important when a nation lacks a state of its own, as we have experienced in the history of Poland, too.

The above discussion shows not every human population constitutes a nation, but only one that is focused on the full realisation of the human person's potentialities and is capable of pursuing such an objective fairly and effectively. The nation's ultimate goal is the integral development of the human person. Any other community – family, lineage, tribe, school, association, or political party – can realise that goal only to a certain extent. Such communities shape the life of the nation without replacing it. The nation, in turn, does not nullify the preceding stages of social life; rather, it enhances each of them for the personal good of its own members. Each of these stages combines, in its own way, biological and spiritual factors. Feliks Koneczny emphasised that 'nation is a commonalty of the highest order as it is organising the society for spiritual objectives' (Koneczny 1997, 248). Joint actions undertaken within the nation realise both external, objective goods, and internal, subjective, and personal goods and aims. Each member of the nation is a person with a variety of potentialities, which can be actuated only within a specific community. Only in this manner does one's personal development take place.

2 Identity and National Culture

Knowing what nation is and what its purpose is, we must ask how this purpose is realised. The answer is: through national culture, which differs from the culture of proto-national communities in its level of its development. This can be seen, for instance, in the domain of language, which is raised from folk myths and legends to the literary level, or in folk customs, which are replaced by national ethics. In his speech at the United Nations, Pope John Paul II stated clearly: 'The right of nations to exist naturally implies every nation can enjoy the right to its own language and culture, by means of which people express and represent what I'd call their fundamental spiritual sovereignty. History shows that in extreme circumstances (which have happened in the country of my birth, for example), it is culture that helps a nation survive the loss of its political and economic independence. Thus, every nation has the right to determine its life according to its own tradition, of course with the exception of any abuses of fundamental human rights, in particular, the persecution of minorities. Every nation has the right to build its own future by assuring adequate education to the young generation' (John Paul II 1996, 13). Thus, national culture stands guard over 'spiritual sovereignty'.

As already noted, neither the family nor the tribe provides sufficient resources for the human person to develop adequately in all domains of culture. It is the nation that supplies these resources in a harmonised manner: high levels of knowledge, skills, and morality. Without them, there can be no nation. Piotr Jaroszyński is therefore correct to point out: 'This does not imply, however, that national culture is in itself something absolute or the best, or that there can ever be only one such nation. The point is, rather, that a harmonised national culture is able to assimilate the achievements of other cultures not by means of simple extension and accumulation, but through translation; only then can we speak of genuine assimilation. National culture represents an optimum correlation of scope and content; any further extension impoverishes the content, since what distinguishes must be rejected, while excessive disambiguation restricts the reach of a culture too much. The phrase 'national culture' is eminently analogical. If it is treated univocally, we are dealing with a form of nationalism; if it is treated merely equivocally, it will no longer be a national culture but an agglomeration of regional cultures' (Jaroszyński 1996, 173).

Thus, national culture is a high culture, capable of integrating even people of diverse ethnicities, customs, or political affiliations into a single nation. They can become members of the same nation. This was already declared by Isocrates (436–338 BCE), who identified Greeks through culture rather than blood ties: 'whoever participates in our *paideia* is a Hellene in a higher sense than whoever only shares our blood'. In this context, the meaning of the love of liberty, so characteristic of the Hellenes, becomes very clear. It involves the right of an individual to take part in the socio-political life of their community and to share responsibility for it. A citizen of a Greek *polis* identified with the life of his community. This allowed for the integral development of a person among other persons. Participation in public life was, for a Greek, not only a responsible service for the good of others within a given community but, above all, an honour.

A nation is dynamic. Its members jointly realise specific objectives for a number of years. It is a time of work, struggle, glory, shame, joy, and sadness, which increasingly shape the spirituality of a given group. Historic events, and memory about them, are crucial to this process. This unique national community creates its own presence and builds its future while referring back to certain elements of the past. Through constant reference to its history, a nation can confront what happens to it and avoid errors known from the past. This joint endeavour of multiple generations is capable of creating high culture. Such culture arises from the intellectual and moral work of a nation's members, not merely from biological factors (a community of blood and kinship).

Therefore, the nation is something other than an ethnic group. Shared experiences and history are the primary causes of the nation's emergence and existence. It can thus be said that the longer its history, the more enduring a nation. Belonging to a given nation is not inherited through a genetic code, but acquired through education.

Each member of a nation is involved in the realisation of the common good according to their abilities. Such a culture-forming collaboration among all members of the nation integrates the national community. National culture is also a factor that distinguishes a given nation from others; in this way, it constitutes its identity. A nation's sense of identity is based on tradition, transmitted across generations, above all within the family. Tradition consists of customs, views, beliefs, ways of thinking and behaving, and standards of conduct. Elements that both distinguish and integrate particular nations include language, religion, the family model, history, tradition, folklore, literature, as well as land, cooperation, and statehood.

This commitment to public life is manifested in the creation of culture. This does not mean culture only in the sense of the arts, refined manners, or so-called material culture, but also spiritual, high culture within the nation, characterised by the primacy of spirit over matter. The development and transmission of its achievements accompany the continuous succession of generations within the nation. What is at issue here, therefore, is culture in its primary sense, as it relates to personal life: culture as an essential dimension of being human, expressed in cognition, love, and feelings, and determining the manner of being human. This culture is not a matter of professing a 'value system', but of a genuine 'cultivation' of human potentialities, predispositions, and abilities. As Cicero put it: 'Just as a field [...], though fertile, cannot be productive without cultivation, so the mind without education. Each is helpless without the other. The cultivation of a mind [*cultura animi*] is philosophy: it roots out defects, prepares the mind for receiving seeds, and sows them so that, once mature, they yield a plentiful harvest' (Cicero 1961, II, 5, 3). The aim of such cultivation is *optimum potentiae*, that is, the fullest and best activation of human potentialities. This was expressed in the Greek ideal known as *kalokagathia* (beauty and goodness, nobility, perfection) (Jaeger 2001), understood as a synthesis of physical and spiritual excellence, encapsulated in the phrase *kalos kagathos anér*¹. Such fullness can only be attained by a person completely aware of their own value. The ideal both obliged and encouraged imitation.

1 The oldest extant text to include this phrase is a fragment by Solon. Cf. Solon, *Elegie*, frg. 39–40. Cf. also E. Diehl, *Anthologia Lyrica Graeca*, Leipzig 1925. A complete bibliography on this subject is part of the doctoral dissertation of H. Wankel: *Kalos kai agathos*, Würzburg 1961.

Although the term *kalokagathia* originated in the world of nobility, it gradually acquired a broader meaning and eventually came to denote the ideal of any citizen striving for higher culture, becoming a synonym of ‘civic virtue’². It thus held enormous significance for public life.

The level to which a given person develops has significance not only for the individual but also for the wider community. The higher an individual’s standard, the more benefits accrue to the whole community in which they live. A nation becomes richer inwardly when all its members attain a higher degree of spiritual perfection. National identity is thereby strengthened as well. It is therefore very important that every generation can learn about its great compatriots. This is a prerequisite for a high standard of national life, that is, for high culture. Such outstanding individuals can be found in every sphere of life.

3 Great Poles and High Culture

A number of great Poles can be identified in the history of the Polish nation who have made significant contributions to culture, both Polish and global. They include Tadeusz Kościuszko, Ignacy Jan Paderewski, and President Edward Raczyński. Not only their outstanding talents, but also their attitudes to life and steely characters – hardened in extremely difficult circumstances – were exceptional.

They were all Poles not only by virtue of their origin or citizenship, but also through the culture in which they were brought up, which shaped their ethos. They were very well educated, first at home and later at successive stages of formal education. The piano genius and Prime Minister of the Second Republic of Poland, Ignacy Jan Paderewski, learned history, geography, the French language, and Polish literature at home, and later studied at the Warsaw Musical Institute (Zamoyski 2010, 22). President Edward Raczyński likewise began his education at home. He read law in Leipzig and studied at the London School of Political Sciences, gaining his doctoral degree at the Jagiellonian University³.

2 As Jaeger notes: ‘The original *polis* was to its citizens a warranty of all the highest values in life. *Politeusthai* meant “take part in public life”, but also simply “live”, since both the notions were virtually identical to the people of that age. Never after did the state express the entire human dignity and value to such a high degree. [...] that equality between *humanitas* (humanity) and the state can only be understood in the context of the culture of the old Greek *polis*, for which community was the total of all higher values, even something divine’ (Jaeger 2001, 182–183).

3 See more in *Dyplomaci II RP: Edward Raczyński* – a documentary about Count Edward Bernard Raczyński – and *Od Rogalina do Londynu: Ambasador Edward Raczyński* – a documentary

A thorough education played a major role in their formation, developing their gifts and often their genius. The education of character was another important matter. Education is the foundation of culture, transmitted through upbringing (Jaroszyński 2014, 119). Both elements – upbringing and education – have substantial roles in shaping high culture, or national culture. It is elite inasmuch as it requires an adequate standard of education across a range of fields if one is to live by it. We acquire it through contact with appropriate literature and by growing up in an appropriate environment. National culture is transmitted on the basis of tradition, first through the home, then through school, the state, and the Church. It is owing to this particular culture that our spiritual development takes place – our sensitivity, mind, will, and character – which helps to foster proper behaviour and attitudes, such as patriotism. Patriotism (Gr. *ojkofilia*) is the virtue of a just love for what is native, more narrowly referred to as father- or motherland: our place on earth, family and community, nation, shared history and tradition, the depositary of civilisation (the way of public life) and culture (Kiereś 2007, 178). Those ideals formed part of the tradition of Polish families, who attached special weight to the upbringing and comprehensive education of their children. They recognised the connection between private life and the fate of the nation as a whole (Jaroszyński 2003, 8–14).

Let us return to the question of what the above-mentioned figures, all representative of high culture, have in common. Aside from their genius, they possess properly formed characters. Once again, high culture is the condition for attaining this goal, and it can only be generated and sustained within a nation.

Let us emphasise that one must be brought up in high culture in order to choose and strive for higher goods. This requires persistent effort. As part of such upbringing, one is taught from earliest years to distinguish good from evil and greater from lesser goods. One such greater good is the welfare of the fatherland, for which one may be capable of sacrificing much, including even one's own life. This process of upbringing is about equipping a person with a set of stable capacities for doing good – virtues intended to help them recognise (through reason) a real good and to strengthen their will sufficiently to follow it.

The acquisition of appropriate virtues through their continued practice in everyday life makes it easier and quicker to choose the right good, even though it is hard and painful at first. This is how upbringing into high culture and the choice of higher goods work.

about Edward Raczyński's life in London, the establishment of the Raczyńskis Foundation, and the awarding of the diploma of Honorary Citizen of the City of Poznań (in 1990).

Aristotle helps us to understand the essence of high culture and of being brought up into it. He noted that generosity is the value that characterises a representative of high culture to the highest degree⁴ (Aristotle 1996, 1123a–1125a). Today, generosity is understood somewhat differently. We tend to associate it with kind-heartedness, charity, helpfulness, understanding, and the like. This narrow notion fails to do justice to its essence.

It turns out it originally meant the greatness and strength of soul. It was regarded as a prerequisite for self-confidence and reasonable pride. Someone who is generous is rightly proud. This was first noted by Homer, who wrote in his epic poems (*Iliad* and *Odyssey*) about aristocratic pride⁵ (Jaeger 2001, 91–113). It was a feature of his great heroes – Achilles and Odysseus. This sense of reasonable pride kept driving them towards the utmost bravery. Thus, generosity was a guarantee of the impeccable moral perfection of a well-born man, who could not deserve the highest esteem if had he behaved basely in any sphere of his life.

Generosity is therefore a necessary condition for ethical valour and for the correct assessment of great and lesser goods. Since striving for great goods is difficult, the virtue of generosity helps to overcome these difficulties, as it is a characteristic virtue within the group of valour (Chłodna-Błach 2016, 63).

The objective of generosity is one's spiritual greatness and thus one's high culture. A person considers himself worthy of great things and indeed deserves them. Generosity therefore has nothing in common with arrogance or putting on fancy airs. It is a characteristic of someone confident in their powers (Aristoteles 1988, 1389a). It binds all virtues into a single harmonious whole, forming a strong yet living character capable of adapting to fluctuating circumstances. Hence, generosity is a cornerstone of moral life.

A generous person tends towards what is greatest, in accordance with reason. They consider themselves worthy of what is proportionate to their dignity. They strive for what is great and deserving of great respect – that is, what rises above the average – while avoiding what is mean. This is an expression of their high culture. A generous person can be recognised by their external behaviour, which reflects their inner attitude. Through appropriate behaviour,

4 Cf. also A. Krokiewicz, "O wielkodusznym człowieku Arystotelesa" in: *Meander* 5 (1950) no. 1, 39–48.

5 Cf. also P. Jaroszyński, "Rola Homera w kulturze śródziemnomorskiej", in *Powszechna encyklopedia filozofii*, ed. by A. Maryniarczyk et al., vol. 4, Lublin 2003, 562.

and through a conscious and thoughtful choice of environment, activities, and reading, one can enrich and order the world of one's thoughts and ambitions. Whatever stands in the way of this impairs and weakens the spirit.

The difference between high and low cultures can clearly be seen here. The former is intended to satisfy higher, spiritual human needs, whereas the latter appeals only to human desires and base feelings (Chłodna-Błach 2016, 149–187). Let us say it again: to recognise the difference between high and low cultures, one must be brought up in a particular way. One's environment and surroundings, and the people with whom one associates, are not without importance, since all of this shapes one's character.

To make proper choices, people must know themselves – the possibilities inherent in human nature, as well as their individual capacities and abilities. Self-knowledge and humility are prerequisite for the virtue of generosity. In order to develop, we need to face the truth about ourselves (Chłodna-Błach 2016, 58).

Let us summarise by listing several crucial features of generosity, an important component of high culture. A generous person, rightly proud, faces dangers in important matters. They tend to make sacrifices, do good, are willing to help, act openly, tell the truth, are not vengeful, and do not complain or ask for petty things, or for things that cannot be changed. They tend to possess things that are beautiful rather than useful or profitable (Aristoteles 1996, 1125a). Thus, a generous person is noble as well.

All of these are characteristics of great Poles, including those mentioned above. It should be emphasised once again they all had a strong sense of responsibility not only for their own life but also for public life, as they worked on their characters by cultivating virtues, in particular generosity. Their outlook was therefore broader: they did not focus on themselves or on their particular interests. They were proud, knew their worth, and defended the dignity of the Polish nation. They represented Polish elites, who understood what it meant to devote their talents 'to the service' of the common good.

Surrounded by Polish national culture, they fostered a patriotism based not on fleeting emotions, but on a constant readiness for action and great sacrifices. This is only possible where there is a high sense of morality, honesty, honour, and nobility (generosity), that is, within a properly formed culture – high culture. Therefore, we should follow their example and remember what their greatness consisted in, because to develop properly and to be capable of great deeds one must keep the best models in sight. And Polish culture is not short of them.

References

- Arystoteles. *Dzieła wszystkie*. Vol. 5. *Etyka nikomachejska*. Tr. by Daniela Gromska. Warszawa: PWN, 1996.
- Arystoteles. *Retoryka. Poetyka*. Ed. by Henryk Podbielski. Warszawa: PWN, 1988.
- Chłodna-Błach, Imelda. *Od paidei do kultury wysokiej. Filozoficzno-antropologiczne podstawy sporu o kulturę*. Lublin: PTTA, 2016.
- Cycon. *Rozmowy tuskulańskie* (II, 5, 3), in *Pisma filozoficzne*, vol. 3. tr. by Józef Śmigaj. Warszawa: PWN, 1961.
- Diehl, Ernst. *Anthologia Lyrica Graeca*. Leipzig: B.G. Teubner, 1925.
- Jaeger, Werner. *Paideia. Formowanie człowieka greckiego*, tr. by Marian Plezia and Henryk Bednarek. Warszawa: Fundacja Aletheia, 2001.
- Jan Paweł II. "O prawa narodów", in *Człowiek w Kulturze* 8(1996): 7–21. Lublin: Fundacja „Lubelska Szkoła Filozofii Chrześcijańskiej”.
- Jan Paweł II. "Przemówienie do Zgromadzenia Ogólnego ONZ, Nowy Jork, 5 października 1995", in *Przemówienia i homilie Ojca Świętego Jana Pawła II*, sel. by Janusz Poniewierski. Kraków: WAM, 1997.
- Jaroszyński, Piotr. *Kultura. Dramat natury i osoby*. Lublin: PTTA, 2020.
- Jaroszyński, Piotr. *Ocalić polskość!*. Warszawa: Dom Polski, 2003.
- Jaroszyński, Piotr. "Prawo narodów do własnej kultury", in *Człowiek w Kulturze* 8 (1996): 171–180. Lublin: Fundacja "Lubelska Szkoła Filozofii Chrześcijańskiej".
- Jaroszyński, P. "Rola Homera w kulturze śródziemnomorskiej", *Powszechna encyklopedia filozofii*, ed. by Andrzej Maryniarczyk et al. vol. 4. Lublin: PTTA, 2003.
- Jaroszyński, Piotr. *Nie tracić ducha!*. Warszawa: Dom Polski, 2014.
- Kiereś, Henryk. "Głos w sprawie patriotyzmu", in idem. *Człowiek i cywilizacja*, 177–179. Lublin: Fundacja "Servire Veritati" Instytut Edukacji Narodowej, 2007.
- Kiereś, Henryk. *Służyć kulturze*. Lublin: Fundacja "Servire Veritati" Instytut Edukacji Narodowej, 1998.
- Koneczny, Feliks. *O cywilizację łacińską*. Lublin: Wydawnictwo Onion, 1996.
- Koneczny, Feliks. *Państwo i prawo w cywilizacji łacińskiej*. Komorów: Wydawnictwo Antyk Marcin Dybowski, 1997.
- Krąpiec, Mieczysław, Albert. *Człowiek w kulturze*. Lublin: RW KUL, 1999.
- Krąpiec, Mieczysław, Albert. "Kultura", in *Powszechna encyklopedia filozofii*, 132–138, ed. by Andrzej Maryniarczyk et al. vol. 6. Lublin: PTTA, 2005.
- Krąpiec, Mieczysław, Albert. *U podstaw rozumienia kultury*. Lublin: RW KUL, 1991.
- Krokiewicz, Adam. "O wielkodusznym człowieku Arystotelesa", in *Meander* 5 (1950) no. 1.
- Kwaśniewski, Krzysztof. "O nacjonalizmie inaczej", *Sprawy Narodowościowe*, 5 (1996), no. 1.

Scruton, Roger. "Doświadczenie estetyczne a kultura", *Estetyka w Świecie* vol. 3 (1991): 109–122.

Tarasiewicz, Paweł. *Spór o naród*. Lublin: TN KUL, 2003.

Wankel, Hermann. *Kalos kai agathos*. Würzburg: Julius-Maximilians-Universität, 1961.

Zamojski, Adam. *Paderewski*. Warszawa: PIW, 2010.

Espace Muséal Gombrowicz in Vence as an Example of a Contemporary Formula for the Preservation and Development of the Emigrant Polish National Heritage

Anna Spólna

Abstract This paper describes the circumstances surrounding the establishment of the Espace Muséal Gombrowicz in Vence (France) and the functioning of this museum space as an instance of preserving emigrant Polish national heritage. It discusses both the process of adapting Villa Alexandrine for use as a museum and the Franco-Polish model of co-administration, as well as the institution's operation under the content-related supervision of the Witold Gombrowicz Museum in Wsola. The paper characterises the model through which the identity of the place is constructed and examines the effectiveness of combining Polish and French receptions of Gombrowicz's memory. The museum's success is evidenced by the international literary, artistic, and scientific events it hosts, and by the several thousand guests it welcomes annually, although the institution faces considerable challenges. The text concludes by outlining prospects for the future development of the Espace Muséal Gombrowicz in Vence.

Keywords Witold Gombrowicz – Espace Muséal Gombrowicz – Witold Gombrowicz Museum – Vence – museology – cultural heritage – cultural tourism

1 Introduction

Witold Gombrowicz and his wife-to-be, Rita Labrosse, came to settle in Vence, a town of around twelve thousand inhabitants near Nice in southern France, in the autumn of 1964. The writer spent the final – perhaps the happiest – years of his life there, universally acclaimed and in relative wealth. It was here that he worked on *Cosmos*, *Operetta*, the last volume of *Diaries*, and *A Kind of Testament*. Following his death on 24 July 1969, he was buried at the municipal cemetery on Avenue Colonel Meyère (Gombrowicz 2008, 331–356; Spólna 2022, 170–175; Suchanow 2017, 359–382). Villa Alexandrine, where the Gombrowicz

couple rented extensive lodgings¹, is a shared Franco-Polish cultural asset and is now a museum space devoted to the work and life of this eminent European writer, whose works have been translated into forty languages and who enjoys unflagging international fame.

The Gombrowicz Museum on the Cote d'Azur is an instance of contemporary preservation of valuable cultural heritage abroad. It combines the functions of a biographical and literary exhibition, a seedbed for artistic activity, and an intermediary between the cultures of Poland and France. The institution is jointly administered by entities from two European Union states and is expanding not only beyond the Cote d'Azur but also beyond the continent. This development relies on cooperation between the two countries at both central and local levels, on recognising mutual needs, on respect for differences, and on building a transnational community of lovers of art and literature. Espace Gombrowicz has become an ambassador of Polish culture in France and on the international stage.

2 The Circumstances of the Establishment of the Espace Muséal Gombrowicz in Vence

The Espace Muséal Witold Gombrowicz/ Witold Gombrowicz Museum in Vence was officially opened on 23 September 2017 in the presence of Jarosław Sellin, State Secretary at the Polish Ministry of Culture and National Heritage, a delegation of the Polish Senate and Parliament headed by Senate Vice-Speaker Michał Seweryński, and the authorities of Vence. Attempts to establish the museum had taken years, however, initiated by the writer's widow, Rita Gombrowicz, and Evelyne Temmam, deputy mayor of the town. Following an agreement between the local authorities of Vence and the Polish Ministry of Culture and National Heritage (6 February 2017), repair work and adaptations began in the historic Villa Alexandrine at 36 Place du Grand Jardin. This architecturally precious 1911 structure, designed in the Belle Époque style, had been acquired by the town as early as 1988. In a state of great disrepair, it was refurbished only in 2017, when the wall murals were also reconstructed. The costs were borne by the local authorities of Vence, who were awarded 'Les Rubans

1 The villa interiors and the town of Vence were the setting for the film *Powrót* (Return) (2023), directed by Andrzej Wolski and based on Andrzej Seweryn's monodrama about Gombrowicz's *Diaries*. The film was screened at the Two Banks Festival in 2024, followed by the discussion 'Gombrowicz's Emigrations'. See <https://dwabrzegi.pl/program-filmowy/powrot-emigracje-gombrowicza/> [accessed 15 Sept. 2024].

du Patrimoine' for the renovation². The costs of conservation and repairs inside the building and of the exhibition (about €1 million) were covered by the Polish Ministry of Culture and National Heritage and its cooperating entities. The municipality granted the Polish side use of the third-floor space – the former flat of the Gombrowicz couple – as well as the staircase serving as the entrance to the exhibition. Conservation work was carried out by the Society of Friends of the Fine Arts Academy in Warsaw, funded by the Minister's Programme 'The Protection of National Heritage Abroad'. More than thirty Polish artists worked for several months to conserve the painted elements³.

The process of adapting the interior for exhibition purposes consisted of two stages: on the fifth anniversary of the institution, in the autumn of 2022, the permanent exhibition was expanded with three additional themed rooms. The museum space thus came to occupy the writer's entire former flat. The work cost nearly PLN 720,000. The opening ceremony for the new section of Espace Muséal Gombrowicz highlighted the institution's international status; representatives of the Polish government, including the Ministry of Culture and National Heritage, as well as representatives of Vence and of regional authorities from Nice and Mazovia, were present. Rita Gombrowicz also attended.

The agreement on the co-administration of the Espace Muséal Gombrowicz was signed on 15 May 2019 by Deputy Mayor Temmam and Tomasz Tyczyński, curator of the Gombrowicz Museum at Wsola (a branch of Adam Mickiewicz Literature Museum in Warsaw), in the presence of Deputy Prime Minister and Culture Minister Professor Piotr Gliński and Deputy Minister Sellin. The agreement sets out the principles of collaboration and the division of responsibilities relating to the care and administration of the Gombrowicz Museum. Content-related supervision is entrusted to the Witold Gombrowicz Museum in Wsola. One person is employed in Vence under a contract of employment governed by French law. Utilities and the maintenance of the exhibition rooms are paid for by the French side. The literary and artistic actions coordinated by the institution in France are funded through a designated subsidy from the Polish Ministry (PLN 300,000 a year) and grants from the Mazovian Marshal's Office. They are supported by the General Consulate of Poland in Lyons, the Adam Mickiewicz Institute, the regional authorities of Provence-Alps-Cote d'Azur, the association Institut Espace Muséal Villa Alexandrine, and the Polish Gombrowicz Institute Foundation.

2 Available at: <https://www.nicepremium.fr/actualite/prix-regional-des-rubans-du-patrimoine-2018-la-villa-alexandrine-et-l-espace-museal-witold24382/> [accessed 15 Sept. 2024].

3 Available at: <https://www.pap.pl/aktualnosci/news%2C1094002%2Cotwaracie-przestrzeni-muzealnej-witolda-gombrowicza-w-vence-we-francji.html> [accessed 15 Sept. 2024].

The existence of the Espace Muséal Gombrowicz forms part of a strategy of preserving and making accessible cultural heritage of objective historic and artistic value, with an awareness that it is not merely a tangible, static resource (monument), but also a discursively formed process (Golinowska 2012, 23–25; Kowalski 2013, 19–36). The intellectual nature of Gombrowicz's legacy extends far beyond the museum site, although Villa Alexandrine draws visitors into the world of the writer's values.

3 The Exhibition and the Functioning of the Gombrowicz Museum in Vence

Research into cultural tourism shows that the setting of a biographical museum is crucial to visitor numbers. 'The status of a patron and attractive location have proven the most important factors affecting the volume of tourist traffic in museums and knowledge about them' (Rodacka 2002, 46).

Both categories work in favour of the Espace Muséal Gombrowicz. Volumes have been written about the significance of Gombrowicz's oeuvre. In the case of a museum outside his native country, it is his international fame – as the winner of the prestigious Prix Formentor and a multiple-time Nobel Prize runner-up, translated into more than forty languages, with his plays staged in theatres around the world and his works adapted for film on three occasions – that plays the key role. From the 1950s, Gombrowicz was associated with the Kultura Literary Institute and thus exerted considerable influence on Polish émigrés in Western Europe and on the democratic opposition in Poland. All his books have been translated into French and are regularly republished by one of France's largest independent publishers, Éditions Gallimard. Admirers of the writer therefore engage in cultural tourism, undertaking 'travel [...] guided by the artist's person and work', while the places they visit provide food for thought about his achievements (Mikos v. Rohrscheidt 2016, 94). Some visitors, however, are tourists who encounter Gombrowicz for the first time only when visiting Vence – visitors whose attention must therefore be won with redoubled intensity.

The museum's location in France is advantageous as well. Vence is a tourist destination between the Mediterranean and the Maritime Alps, close to Nice, Antibes, and Cannes, and conveniently connected to the airport. The town boasts a Carolingian cathedral featuring mosaics by Marc Chagall, the Matisse Museum, and the Chapel of the Rosary, designed by Matisse. Villa Alexandrine itself, situated in the historic part of the town, combines tangible and intangible heritage (Folga-Januszczyńska 2008, 200–201). It has been adapted for

promotional, cultural, and museum purposes. A tourist information office for Vence and the surrounding area operates on the ground floor and naturally encourages visits to the Gombrowicz exhibition as well. An expansive 'European Room' on the first floor hosts arts workshops, musical and literary meetings, discussion panels, and temporary exhibitions – initiated both locally and by the Polish side. The writer's admirers visiting Vence can thus become not only museum visitors but also cultural tourists, combining 'high art', education, experience, and entertainment without constructing hierarchies or contrasts (Mikos v. Rohrscheidt 2016, 46–52).

The exhibition itself is intended to draw on the aura of a place closely associated with the writer, yet it goes beyond a simple retelling of his life and the contents of his works. Curated by Jolanta Pol, it opens with 'Biography': a timetable of his life and oeuvre, appended by reproductions of archival photographs. The room 'Interaction, Self-creation' places the writer's photographic portraits within a specially designed system of mirrors, which also reflect visitors. The next room, 'A Well of Books', presents editions of Gombrowicz's works in multiple languages. Subsequent rooms – 'Genealogies', 'Bestiary', and 'Theatre' – present the family history, the sources of the author's worldview, his relationship with nature, and his presence on theatre stages around the world. Important objects are arranged throughout the space: a tapestry by Maria Sperling and Józef Jarema, Polish artist friends of Gombrowicz; a painting by Kazimierz Głaz, *A Tribute to Gombrowicz*, made during his stay in Vence; an early twentieth-century clock purchased by the writer; and his binoculars. Visitors are surrounded by quotations, photos of the Gombrowicz couple, and images of the many intellectual friends who visited them there. A video record of a conversation with Rita Gombrowicz about their life in Vence offers insight into the private lives of the former inhabitants of these rooms. Everything is further enriched with multimedia materials, documentary fragments, and interviews.

Such a script enables visitors to enter the world of Gombrowicz's life and work in an interactive manner (Stasiak 2007, 125), by engaging in dialogue with his ideas, confronting his existential challenges, and discovering his stylistic nuances through playful interaction with his quotations⁴, fragments of theatre productions, and television interviews.

Adam Orlewicz and Nowy Motyw company are responsible for exhibition's visual concept. Their website explains the initial graphic idea as follows:

4 Some are mobile, uncovered in the process of visiting and multiplied with the system of mirror reflections.

The design is based on spatial elements – mainly glass, mirrors, and backlit features – that weave images of Gombrowicz into the space of the historic staircase and three rooms of the writer's former flat. Parts of the exhibition display photographic reproductions and frame multimedia projections, complemented by a multilingual audio guide⁵.

It should be added the Espace Muséal is accessible to the speakers of languages from around the world. Visitors can book tours in Polish (for the writer's compatriots), French (through which Gombrowicz became known to Europeans chiefly via translation), and English (accessible to most other tourists). All descriptions, quotations, and materials are trilingual. Visitors to the exhibition can experience a kind of immersion in Gombrowicz's world on terms of their own choosing: by arranging a guided visit or exploring independently, reading, listening, and watching the elements of the exhibition they select. It is especially in the latter case that they assume the role of discoverers and begin a dialogue with Gombrowicz's word, becoming part of the space through the system of projections and mirror reflections.

The fact that this exhibition concept is intellectually stimulating and emotionally engaging, and that visits to the museum leave indelible marks on guests' memories, is evidenced by the following reviews on the Espace Muséal Gombrowicz Facebook page:

A must for the travelling lovers of Witold Gombrowicz's work. The lady working at the museum is great and full of passion. Recommended and encouraged – come in droves!

We knew it would a highpoint of our visiting route, but we'd never expected such an extraordinary mood. Coming into the flat, one has the impression Gombrowicz and Rita are there all the time [...]⁶.

Souvenirs and books are not sold at the museum, but visitors are directed to places where Gombrowicz's works in French and Polish can be purchased. They can also be consulted on site by those interested. Research shows that, for two decades, the internet has been the key source of information for travellers and tourists (Richards 2011, 18). Like any state-of-the-art institution, the Espace Muséal has maintained an online and social-media presence from the

5 Available at: <https://nowymotyw.com/projects/exhibitions/venge/> [accessed 15 Sept. 2024].

6 Available at: <https://www.facebook.com/EspaceGombrowicz> [accessed 15 Sept. 2024].

beginning. Information about its activities can be found on its official website and fan page⁷, as well as on television and selected YouTube channels⁸.

The Espace Muséal Gombrowicz has several thousand international visitors each year. In its first year of operation, it received more than 4,000 guests. Depending on the season, monthly figures range from 200 to almost 500 (with a record of 478 in September 2023).

4 Circles of Presence – The Town of Vence and the French Riviera

The modern approach to preserving and safeguarding Polish emigrant national heritage requires going beyond the museum walls, both by creating events and by joining shared, local and supra-local initiatives that promote Polish art and culture in an international context. The Gombrowicz Museum in Vence has consistently adhered to the principle of bilingualism in the cultural projects in which it takes part. It promotes these projects both within the émigré community and among the French population of the Cote d'Azur, and even in Paris (as well be mentioned below).

In line with the principle of globality, events are intended to contribute to building a local cultural agora (Piotrowski 2011, 46–48). They become part of, or are aligned with, the existing municipal events calendar, combining competitiveness in the museum tourism market with the complementarity of offerings (Stasiak 2007, 121–122). Invitations to Gombrowicz-related events are posted on the town's website⁹. They often conclude with 'Apéro Gombro' meetings on the Villa Alexandrine terrace – informal discussions on literature and the writer in a relaxed ambience. Municipal celebrations, such as *La fête des fontaines* (Fountain Festival) in May, are enriched with walks in the writer's footsteps. The Polish institution also joins the celebrations of the European Heritage Days and International Museum Day – both of great importance in France (Barbier 2005, 100). The museum maintains friendly relations with the Association Bibliothèque pour Tous de Vence (Library for everyone from Vence association) and the Association amicale franco-polonaise du Var (The Polish–French friendship society of Var province).

7 Cf. e.g. <https://www.facebook.com/MuzeumWitoldaGombrowicza/videos/1091364828180298> [accessed 15 Sept. 2024].

8 Cf. e.g. <https://www.youtube.com/watch?v=gRV92NbSAik&t=63s>; <https://www.youtube.com/watch?v=ciAyyCPSjEA> [accessed 15 Sept. 2024].

9 Available at: <https://vence.fr> [accessed 15 Sept. 2024].

Attracting broader audiences to events organised by the institution is a challenge. Attendance has varied from several hundred to a thousand people. It should be borne in mind that Gombrowicz is a niche and demanding author, less immediately attractive than native artists to the average French person living away from major cultural and academic centres. The museum seeks to attract visitors of different ages, including young people, who constitute a steadily growing group of cultural tourists (Richards 2011, 15). Nonetheless, an aversion to museum populism (Nadolska-Styczyńska, 217–218), care for the standard of content, and the effort to link events to the intellectually demanding world of Gombrowicz's thought prevent most events from gaining a mass following.

The seven years of the Espace Muséal Gombrowicz presence in the Maritime Alps region have involved several dozen events. The examples described below, organised into categories, are only a small yet representative sample¹⁰.

Multidisciplinary festivals:

- a) 'I, Gombrowicz', part of the opening of the museum space, including exhibitions, readings, film screenings, and sessions (2017).
- b) 'The First Birthday of the Gombrowicz Museum in Vence' – a reading by actors, a literary walk, a conversation with Rita Gombrowicz, a lecture, and film screening (2018).
- c) 'Gombrowicz's Cosmos' on the fiftieth anniversary of his death – two concerts, a monodrama performance, and an exhibition (2019).
- d) 'Gombrowicz – presences in Vence' – the official opening of new museum rooms in the Villa Alexandrine, a literary walk, a reading of the writer's letters, and concerts (2022).
- e) 'Voix d'Europe centrale: pourquoi lire la littérature polonaise, tchèque, roumaine ou hongroise?' (Voices of Central Europe: Why read Polish, Czech, Romanian, or Hungarian literature?) – part of the literary festival 'Lire à Vence' (2024).

Translation congresses:

- a) Second part of the International Gombrowicz Translation Congress, in continuation of events held in Poland, including a scholarly round-table, a walk in Gombrowicz's footsteps, and a literary picnic arranged by Vence

¹⁰ More details can be found on the websites of the Gombrowicz museums in Wsola and Vence, as well as on information portals on Polish culture in France, e.g.: <https://polskifr.fr/polska-we-francji/50-rocznica-smierci-witolda-gombrowicza-swietowana-w-polsce-i-we-francji/> [accessed 15 Sept. 2024], and on tourism, e.g.: <http://vence-tourisme.com/wp-content/uploads/2022/10/2022-PROGRAM-AFFICHE-NEW-Gombro-Vence.2022.pdf> [accessed 15 Sept. 2024].

authorities on the Col de Vence, the writer's favourite mountain pass (2019).

- b) A meeting between Rita Gombrowicz and Gombrowicz's translators into German (Rolf Fieguth, Olaf Köhl) and Dutch (Paul Beers) (2021).
- c) A seminar of Gombrowicz's translators 'Who shall Gombrowicz Be Explained (Translated) To?', including the panel 'Présents parce que traduits' (Present, because translated); 'Gombrowicz, Argentine, Jeunesse' (Gombrowicz, Argentina, youth), and a multilingual reading of the writer's texts in front of the mayor's office in Vence (2023)¹¹.

Discussion panels and lectures

- a) 'Gombrowicz, cinquante ans après' (Gombrowicz, Fifty Years On) – a discussion involving Mariola Odzimkowska, Małgorzata Smorąg-Goldberg, Piotr Biłos, and Piotr Seweryn Rosoł (2019).
- b) Lecture by Maciej Forycki, 'Casanova vs. Gombrowicz ou le duel à la polonaise' (Casanova vs. Gombrowicz, or a Polish-style duel), part of the European Heritage Days in Vence (2021).
- c) 'Gombrowicz et le reste du monde' (Gombrowicz and the rest of the world) – a panel involving Mateusz Chmurski, Piotr Seweryn Rosoł, Małgorzata Smorąg-Goldberg, and Piotr Sobolczyk, in collaboration with the Sorbonne Université, the Polish Academy of Sciences, and Université Clermont-Auvergne (2022).

Meetings with Polish and French writers and poets:

- a) 'Printemps des Poètes' (The spring of poets) – a reading of Wisława Szymborska's prose and poetry fragments by the actress Juliette Piedevache, accompanied by cello, in cooperation with the Vence Conservatory (2020).
- b) A meeting with Tomasz Różycki, poet and Romanist (2022).
- c) A meeting between Polish secondary school students from an international school in Lyons and Wiktoria Biezuńska and Maciej Bobula, literary residents in Vence as recipients of Gombrowicz Prizes (2024).

Graphic exhibitions

- a) In the urban space: 'Moi, Gombrowicz' (I, Gombrowicz) – an exhibition of photos by Bohdan Paczowski (2017); 'Gombrowicz par Gombrowicz' (Gombrowicz after Gombrowicz) (2019); 'Gombrowicz semi- éternel' (A semi-centennial Gombrowicz) (2022).

11 The participants were Antonia Loyd-Jones, Pau Freixa Terradas, Milica Markić, Larysa Andriievskaya, and Mikaël Guthart Gomez; the seminar was chaired by the present author (Anna Spólna) and Ewa Kobyłecka-Piwońska.

- b) The European Room: 'Bestiary'. An exhibition of collages by Grzegorz Kozera inspired by animals in Gombrowicz's writings (2024).

Concerts

- a) An open air concert of Tęgie Chłopy and the Janusz Prusinowski Kompania (2019)
- b) A concert of the Kapela ze Wsi Warszawa, including musical improvisation with Lo Brissaud, a band that plays traditional Occitan music (2022).

Theatre performances

- a) Readings: from *Ivonne, Princess of Burgundia*, directed by Marie-Agnès Courouble, by the members of the theatre club in Vence (2018); and of correspondence between Gombrowicz and Jean Dubuffet by Jerzy Radziwiłowicz and Andrzej Seweryn (2022)
- b) Seweryn's monodrama based on Gombrowicz's *Diaries*, performed at the Villa Alexandrine on the fiftieth anniversary of the writer's death (2019).

Film screenings

- a) *Cosmos*, directed by Andrzej Żuławski, and *The Last Family*, directed by Piotr Matuszyński (2017).
- b) *Witold Gombrowicz*, Andrzej Wolski's documentary shown on the occasion of the fiftieth anniversary of the writer's death, and a meeting with the director (2019).
- c) *Leave No Traces (Varsovie 83)*, directed by Jan P. Matuszyński, a cooperation between the Polish Institute in Paris and Cinema Casino (2022).
- d) *Reksio, Bolek and Lolek* – Polish children's cartoons shown in the cycle Cine pitchouns gratuit plein air (Free open air cinema), in collaboration with the Art Sept movie theatre (2022).

Themed walks

- a) Vence and Women – an educational walk arranged by the town of Vence and the Des Livres et du Rêve association on International Women's Day, with a focus on Rita Gombrowicz's role in her husband's life and literary career (2020).
- b) Vence ou le Cosmos d'un individu (Vence, or the cosmos of a certain individual) – a walk around town in the footsteps of Gombrowicz, part of Journées européennes du patrimoine (European heritage days) (2020).

The Espace Muséal is a co-organiser of the town's annual chess tournaments in the European Room, not least because Gombrowicz loved the game. The museum also regularly organises walks around Gombrowicz-related sites in Vence for Polish and French groups.

5 The Circles of Presence – Paris, Poland, and the World

The activities of the Espace Muséal Gombrowicz extend far beyond Vence and the Cote d'Azur. The museum engages in close cooperation with institutions promoting Polish heritage abroad, as well as with prestigious research and cultural institutions in Poland and France, including the Polish Institute in Paris, the Polish Academy of Sciences Centre in Paris, the Polish Library and the Historical-Literary Society in Paris, the Kultura Literary Institute Association, Sorbonne Université, Université Clermont-Auvergne, the École Normale Supérieure, and Radio France Culture. Importantly, Rita Gombrowicz lives in Paris; her participation in events organised there enhances both their status and their content-related value.

The following is a list of some of the major scholarly and cultural events that have been held in Paris, organised by the Gombrowicz museums in Vence and Wsola¹²:

- a) 'Witold Gombrowicz – Between Poland and France': the presentation 'Gombrowicz: Wsola and Vence', and the discussion 'Gombrowicz: a tongue worth the Nobel?' (2019).
- b) A cycle of scholarly panels on Gombrowicz's publishers '(M)éditer Gombrowicz': 'L'écrivain face à ses éditeurs' (The writer and his publishers) (2021) and 'Le sain esprit de contradiction' (A healthy spirit of contradiction) (2022)
- c) 'Gombrowicz et l'Allemagne' (Gombrowicz and Germany) (2023).
- d) 'Débuts, hiérarchies, prix' (Debuts, hierarchies, prizes): a panel and the announcement of nominations for the Gombrowicz Literary Prize (2024)¹³

The events in the French capital are often accompanied with walks in the writer's footsteps guided by the university lecturer Mariola Odzimkowska, Rita Gombrowicz's assistant. This wide range of initiatives helps to build bridges between the Polish and French reception of the memory of the author of *Ferdynand*.

12 More information about these events is available at: <https://www.bibliotheque-polonaise-paris-shlp.fr/>; <https://paris.pan.pl/>; and <https://e-teatr.pl/francja-gombro-i-wydawcy-w-paryzu-17845>; <https://instytutpolski.pl/paris/?s=Gombrowicz> [accessed 15 Sept. 2024].

13 Participants included distinguished publishers and translators of Gombrowicz: Anna Bernhardt, Francesco Cataluccio, Jerzy Jarzębski, Piotr Kłoczowski, Ulysse Manhes, Mariola Odzimkowska, Józef Olejniczak, Magdalena Renouf, Paweł Rodak, Jean-Pierre Salgas, Smorąg-Goldberg, Spółna, Kazimierz Piotr Zaleski.

The Witold Gombrowicz Museum in Wsola coordinates and supervises all these activities, and its staff takes part. Visitors and participants are given folders and detailed information about the museum's activities. The exhibition of Cedric Fioretti-Clet entitled 'Vence. To See the Silence' (2019) was hosted at Wsola. Since 2022, the Witold Gombrowicz Literary Prize¹⁴ has included a monthly residence in Vence; recipients have been Maciej Bobula and Wiktoria Biezuńska, mentioned above, as well as Mateusz Pakuła and Katarzyna Groniec. A 'French Evening' is held in Wsola after their return, at which the recipients describe not only their literary work, but also their stay in Provence.

The pandemic accelerated the process of making culture available online. International online events organised by the museum in Wsola brought the Espace Muséal Gombrowicz into the wider circuit of Gombrowicz scholarship. These included the sessions 'L'Internationale Gombrowicz' (The Gombrowicz Internationale) to mark the publication of *Kronos* in Argentina (2020)¹⁵, and 'Gombrowicz – Domesticating the Place / Undomesticated Places', organised together with the Pilecki Institute in Berlin (2021)¹⁶.

Both institutions report on their joint activities on social media. Regular posts about the museum in Wsola and the Gombrowicz Prize appear on the website of the Espace Muséal¹⁷. The site announces temporary exhibitions devoted to the writer and congresses on Gombrowicz in Europe and Argentina. Moreover, it publishes recorded interviews with the writer's wife,¹⁸ as well as papers on Gombrowicz by French scholars¹⁹. This outreach is aimed at the international community of his admirers.

14 Available at: <https://nagrodagombrowicza.pl/> [accessed 15 Sept. 2024].

15 Available at: <https://www.facebook.com/cuencodeplata/videos/2759885880922082> [accessed 15 Sept. 2024].

16 Places important to the writer from the Polish perspective were discussed by the present author (Witold Gombrowicz Museum in Wsola); from the Argentinian perspective by Alicia Borinsky (Boston University) and Kobyłecka-Piwońska (Łódź University); from the German perspective by Olaf Köhl; and from the French perspective by Małgorzata Smorąg-Goldberg (Sorbonne Université). Vence was presented by Katarzyna Kula (Espace Muséal Witold Gombrowicz) and Evelyne Temmam (Institut Européen Espace Muséal Villa Alexandrine). See: <http://www.muzeumgombrowicza.pl/pl/aktualnosci/czytaj/378/gombrowicz-w-berlinie/> [accessed 15 Sept. 2024].

17 See: <https://www.espacegombrowicz.fr/pl> and <https://www.facebook.com/EspaceGombrowicz> [accessed 15 Sept. 2024].

18 E.g., <https://www.youtube.com/watch?v=-QHfr-xLgRo> [accessed 15 Sept. 2024].

19 See: <https://www.en-attendant-nadeau.fr/2020/08/15/ferdydurke-lecon-choses/> [accessed 15 Sept. 2024].

6 Conclusion

Seven years after the Espace Muséal Gombrowicz was opened, some conclusions may already be drawn regarding the museum's model of Polish–French shared administration, its profile, and ways in which Gombrowicz's work is best promoted on the international stage.

The museum exists thanks to decisions and resources provided by central and local authorities of both countries, as well as to the close cooperation of multiple cultural, scholarly, and civic institutions that have built a network of mutual support for their initiatives. Alongside drawing on important anniversaries (such as 2024, proclaimed the Year of Gombrowicz by the Senate of Poland), the Espace is involved in organising cultural events in Vence and participating in festivals celebrated in the region as well as across France, while working closely with major Polish cultural institutions in Paris. Rita Gombrowicz's patronage, goodwill, and readiness to participate in projects serving the writer's heritage are extraordinarily important to the Gombrowicz museum in Vence.

Gombrowicz is well known in France and his works continue to be translated into new languages. Maintaining contact with his translators and publishers – through congresses, meetings, and discussions – is therefore a priority for the institution. Equally important is the dissemination of the achievements of Gombrowicz scholars, and the integration of the international community of researchers who analyse the oeuvre of the author of *Ferdynand* in new contexts.

The Espace Muséal Gombrowicz fulfils the functions set out in Poland's Museum Act, namely:

a non-profit organisation established to collect and safeguard the assets of humanity's tangible and intangible heritage; to provide information about the values and content of its collections; promote the fundamental values of Polish and global history, science and culture; to cultivate cognitive and aesthetic sensibility; and to provide access to its collections²⁰.

Anna Nadolska-Styczyńska is right to stress that 'collecting, scholarly efforts, and the popularisation of knowledge connected with collections' cannot exclude or replace the formation of attitudes and the transmission of values (2018, 212–213). The museum in Vence is an intellectually engaging exhibition, presented in a modern manner, with a reliable biographical and literary

20 The Museum Act of 21 November 1996, OJ 1997, No. 5, item 24 as amended.

narrative that highlights the writer's Polish heritage on the one hand, while posing universal questions about identity, freedom, and belonging on the other. Although this intellectual elitism uplifts Gombrowicz in the eyes of some visitors, the institution seeks to combine the self-reflexive gesture with an invitation to participate both in the contemporary literary circuit (publishing, translation, reading) and in local cultural life.

The museum, perfectly situated in the centre of Vence, is located in an exceptionally attractive tourist region: the Cote d'Azur is the second most visited area of France after Paris. This constitutes an enormous opportunity – one that is being utilised well, as evidenced by strong attendance figures – while at the same time posing the challenge of showing content that stands out amid highly competitive attractions. Hence the emphasis on the multilingual guiding, the preparation of events available in both Polish and French, and the promotion and diversification of the institution's programme.

References

- Barbier, Bernard. "The Cultural Tourism of the French", *Turystyka* no. 1–2 (2005): 95–120.
- Folga-Januszewska, Dorota. "Muzeum: definicja i pojęcie: czym jest muzeum dzisiaj?", *Muzealnictwo* no. 49 (2008): 200–203.
- Golinowska, Karolina. *Paradoksy dziedzictwa. Postindustrialne przestrzenie w optyce kulturoznawczej*. Poznań: Wydawnictwo Nauk Społecznych UAM, 2021.
- Gombrowicz, Rita. *Gombrowicz w Europie. Świadectwa i dokumenty 1963–1969*, tr. by O. Hedermann et al. Kraków: Wydawnictwo Literackie, 2008.
- Kowalski, Krzysztof. *O istocie dziedzictwa europejskiego – rozważania*. Kraków: Międzynarodowe Centrum Kultury, 2013.
- Mikos von Rohrscheidt, Armin. *Turystyka kulturowa. Fenomen, potencjał, perspektywy*. Poznań: Wydawnictwo KulTour.pl, 2016.
- Nadolska-Styczyńska, Anna. "Muzea w sieci zobowiązań. Próba zdiagnozowania problemów", *Zbiór Wiadomości do Antropologii muzealnej* no. 5 (2018): 211–225.
- Piotrowski, Piotr. *Muzeum krytyczne*. Poznań: Wydawnictwo Rebis, 2011.
- Richards, Greg. *Cultural Tourism: Global and Local Perspectives*. New York: Routledge, 2011.
- Rodacka, Małgorzata. "Ruch turystyczny w muzeach biograficznych w Polsce i ich znajomość wśród społeczeństwa", *Turystyka* no. 1 (2002): 37–53.
- Spółna, Anna. "To jest rzeczywiście piękny kraj. Lazurowe Wybrzeże w autonarracjach Witolda Gombrowicza", *Archiwum Emigracji* vol. 29 (2022): 170–189.

Stasiak, Andrzej. "O potrzebie rewolucji w polskim muzealnictwie XXI wieku", in *Kultura i turystyka – razem czy oddzielnie?*, ed. by Andrzej Stasiak. Łódź: Wydawnictwo WSTH, 2007.

Suchanow, Klementyna. *Gombrowicz: Ja, geniusz. Tom 2*. Wołowiec: Muzeum Literatury im. Adama Mickiewicza, Wydawnictwo Czarne, 2017.

International Contexts in the Protection of Cultural Assets and National Heritage



The Protection of Cultural Property in the Face of the Military Conflict in Ukraine – Selected Aspects

Anna Dąbrowska and Tomasz Dąbrowski

Abstract This paper analyses the challenges connected with the protection of cultural property in Ukraine in the context of the ongoing Russo–Ukrainian conflict. Cultural property, both tangible and intangible, plays a key role in shaping national identity and preserving cultural heritage, yet it is particularly exposed to destruction, looting, and devastation. The paper outlines the threats to Ukrainian cultural heritage, analyses international and domestic protection mechanisms, and assesses practical measures aimed at its preservation. It highlights the importance of international cooperation, legal regulation, and the use of state-of-the-art technologies in protecting cultural property, and points to the need for intensified protection, digitalisation, and funding to support the reconstruction of the Ukrainian heritage.

Keywords cultural property – protection of cultural property – cultural heritage – Russo–Ukrainian conflict

1 Introduction

Cultural property comprises both tangible and intangible products of human activity that possess historic, artistic, scientific, or spiritual value. It includes architectural monuments, works of art, archaeological artefacts, manuscripts, books, films, and photographs, as well as language, music, dance, customs, and traditions of a society. These are testimonies of the past – elements of cultural heritage¹ that shape national identity and reflect the development of culture and civilisation over time.

Cultural property – the physical and symbolic traces of the history and traditions of a given nation – plays a crucial role in shaping national identity. It safeguards the memory of the past while forging bonds between generations and strengthening the sense of community. It also helps to preserve cultural

1 At present, cultural heritage is understood as everything that has survived from the past and what society regards as its own, or that a given community treats as a legacy with which it identifies. See more on the nature of cultural heritage in Kowalski, 2013, 15–46; Kocój et al., 2019.

diversity, which is important to humanity's global heritage. Its protection is a moral obligation, necessary to preserve cultural heritage for future generations. In times of military conflict, when cultural property is at a particular risk of destruction, looting (Nahlik 1958), or devastation, its protection becomes an even more urgent issue.

The protection of cultural property during military conflicts reaches back to ancient times, yet the modern approach to the issue began to take shape only in the nineteenth and twentieth centuries. The 1907 Regulations respecting the Laws and Customs of War on Land² were among the first international documents to address the protection of cultural assets in wartime. Following the Second World War, with its mass destruction and looting, the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict was adopted³, establishing an international legal framework and commitments for the protection of cultural property during military conflicts.

Ukraine, with its rich cultural and historic heritage, plays a major role in Eastern Europe. The conflict that began in 2014 with the annexation of Crimea by the Russian Federation, followed by fighting in Donbas, resulted in immense losses not only to industrial and civil infrastructure, but also to cultural property (Kuźniar 2022). From the very first days of the full-scale invasion, cases of war crimes committed by Russian troops against Ukrainian cultural heritage have been documented. The invader is destroying Ukrainian memory and identity.

The war in Ukraine has its roots in the complex history of the region, shaped by centuries of political, ethnic, and religious struggles. Tensions between Ukraine and Russia have been growing for years, and the military conflict has generated not only tragic casualties but also a grave risk to Ukrainian cultural property (Dębski 2007; Plokhly 2015, 300–340; D'Anieri 2019).

As a result of military operations, numerous monuments, museums, libraries, and archives have found themselves under imminent threat. Physical destruction, looting, and illegal trade in artefacts have become serious issues requiring swift and effective protective action. In response to these challenges, both the Ukrainian authorities and the international community have

2 The 1907 Regulations respecting the Laws and Customs of War on Land, an annex to the Convention respecting the Laws and Customs of War on Land, signed in the Hague on 18 October 1907 (the 4th Hague Convention), OJ 1927, No. 21, item 161.

3 The Convention for the Protection of Cultural Property in the Event of Armed Conflict and its Executive Regulations, as well as the Protocol on the Protection of Cultural Property in the Event of Armed Conflict, signed in the Hague on 14 May 1954, OJ 1957, No. 46, item 212 as amended. Two protocols concerning the protection of cultural property in the event of armed conflict were later adopted, in 1954 and 1999, by UNESCO.

undertaken a range of initiatives to protect and preserve cultural property in Ukraine (Bazhenova 2024).

This article analyses the challenges and strategies related to the protection of cultural property in Ukraine in the context of the ongoing military conflict. It identifies the main threats to cultural property and examines their consequences. In addition, domestic and international protective mechanisms are reviewed, and practical measures for the protection of monuments are assessed. The article proceeds from the assumption that, in the context of the ongoing military conflict in Ukraine, the protection of cultural property constitutes a crucial challenge that requires coordinated action at both the international and domestic levels in order to safeguard cultural heritage as a fundamental component of national identity and of the global heritage of humankind.

A range of methods has enabled a comprehensive and multidimensional approach to analysing the challenges and strategies of cultural asset protection in Ukraine in the context of the military conflict. The dogmatic-exegetical method is used to interpret key international treaties and domestic legal sources concerning the protection of cultural property. A review of the research literature and specialist publications on the subject, in both historical and contemporary contexts, as well as an analysis of selected cases of cultural asset destruction in Ukraine, has also proved helpful.

2 Ukrainian Cultural Property and Its Significance

There can be no doubt that Ukraine is a state with a rich cultural heritage, comprising numerous monuments and items of cultural property, such as the eleventh-century Kyiv-Pechersk Lavra, a major Orthodox centre in Eastern Europe; the eleventh-century Saint Sophia Cathedral in Kyiv, a symbol of the Kievan Rus' Christian heritage; the twelfth-century Kamianets-Podilskyi Castle, one of the best preserved castles in Ukraine; and Lviv Old Town, the city's historic centre, with a number of Gothic, Renaissance, and Baroque architectural monuments. Most of these sites are listed as World Heritage by the United Nations Educational, Scientific and Cultural Organization (UNESCO) (Szymgin 2016, 115–135) under the Convention Concerning the Protection of the World Cultural and Natural Heritage of 16 November 1972.⁴

Cultural property plays a fundamental role in shaping Ukraine's national identity, representing the state's unique historic, linguistic, and ethnic heritage.

4 Ratified by Poland on 6 May 1976 (OJ No. 32, item 190) and by Ukraine on 12 October 1988.

S. Yekelchuk argues that the cultivation of national traditions and the protection of historic monuments may be regarded as key to building national unity and reinforcing patriotism in the face of contemporary political challenges (Yekelchuk 2005, 45–47). Such efforts help to build and sustain national identity. Monuments, works of art, literature, and other forms of tangible and intangible culture preserve the distinctive characteristics that set one nation apart from others. Cultural property provides a foundation on which national identity is built (Bazhenova 2022). In addition, it serves as a carrier of historic memory, a testimony to the past, and a symbol of cultural continuity. It preserves history and collective memory and bears witness to past events, achievements, and experiences of a given community. As John H. Merryman notes, cultural property is a basic element of civilisation and national culture (Merryman 1986, 843), integral to understanding a nation's history and heritage.

Examples such as the Kyiv-Pechersk Lavra and Saint Sophia Cathedral in Kyiv reflect a long Christian tradition that is an integral part of Ukrainian identity. The Kamianets-Podilskyi Castle recalls historic struggles and the defence of Ukrainian territory, while Lviv Old Town illustrates the region's rich multiculturalism. The protection and promotion of these cultural assets strengthen social ties and the sense of national community. Cultural property often functions as a national symbol, reinforcing a sense of community and belonging. Symbolic places such as Kyiv's Maidan Nezalezhnosti become arenas for significant political and public events that unite people in the name of shared aims and values (Yekelchuk 2005, 69).

Cultural property is of substantial economic significance, particularly in the context of tourism. It is a crucial resource for public and economic development and may serve as a strategic instrument for revenue generation (UNESCO 2012, 4). In Ukraine, cultural tourism is one of the fastest-growing segments of the tourist market, opening up new opportunities for local economic development and job creation. In the light of a UNESCO report, investment in the protection and promotion of cultural heritage can bring considerable economic benefits by attracting tourists and investors (UNESCO 2013, 102–105).

As regards the multiple dimensions of Ukrainian cultural property, its role in shaping the state's international image should also be noted. Promoting Ukrainian cultural heritage on the international stage helps to raise awareness of the country's rich history and traditions. Scholarship suggests that effective cultural diplomacy may strengthen Ukraine's standing worldwide, drawing the attention of the global community to its cultural achievements and challenges (Wilson 2015, 267–270). In times of crisis and conflict, cultural property can bind the nation. Historical examples show that the protection and

reconstruction of cultural heritage following military conflicts are often prioritised in order to restore a sense of normalcy and shared identity.

3 Threats to Cultural Property During Military Conflicts

Cultural property has been at risk during wars since ancient times, and humanity has long witnessed its destruction in connection with military operations. As a result of the military conflict ongoing since 2014, a range of cultural property in Ukraine has been directly exposed. This is particularly true of eastern and southern regions such as Donetsk and Luhansk, as well as Crimea, annexed by Russia. These areas contain numerous monuments, including the Donetsk Academic Regional Drama Theatre, a major cultural centre in Donbas that has suffered as a result of military operations; Mariupol, a target of intense operations, with multiple buildings of historic and cultural value; and Chersonesus, an ancient Greek city in Crimea, listed as UNESCO World Heritage and now in jeopardy following the annexation of the peninsula.

At the time of the continued military operations in Ukraine, a range of property has become the target of illegal and brutal assaults, bringing a risk of physical damage or destruction. Bombing, missile, air, and artillery strikes, as well as fires, have led to the destruction of many cultural assets, including palaces, museums, libraries, theatres, and churches. As of 14 March 2024, UNESCO had verified damage to 346 cultural items in Ukraine⁵ and noted that, under international law, the intentional destruction of cultural objects may be recognised as a war crime.

The most valuable buildings destroyed as a result of the Russian Federation's operations include the Donetsk Academic Regional Drama Theatre in Mariupol, constructed in the Soviet monumental style in 1956–1960 (Kuźniar 2016, 134–167). The fire at the Donbas Historical Museum, in which a number of exhibits and documents were destroyed, and the devastation of the Korolenko Library in Kharkiv, built in the early twentieth century and housing unique documentary collections, were equally painful. Ukraine's cultural and historic

5 Data from the official website of the Ukrainian Parliament, available at: <https://www.rada.gov.ua/en/news/News/247482.html> [accessed 14 July 2024]. The Ukrainian Ministry of Culture and Information Policy also keeps official records of the destruction of cultural property via an interactive platform, through which anyone can report the destruction of a monument, witnessed and documented first-hand or published online. As of 22 April 2024, the list comprised 243 objects.

heritage sustained another substantial loss after the Kakhovka Hydroelectric Station Dam was blown up on 6 June 2023. This caused flooding across nearly 600 square kilometres of the Kherson Oblast. The house of the painter Polina Rayko, a representative of naïve art compared to Maria Prymachenko and Kateryna Bilokur, was flooded in the town of Oleshky. The water destroyed interior walls bearing paintings and damaged the ceilings and outside walls; only 30–40% of the frescoes survived. As the conflict is ongoing, the damage is bound to escalate.

The military conflict in Ukraine has also created conditions conducive to looting and illegal trade in artefacts. Given inadequate protection and monitoring, a number of cultural assets, such as works of art, have been stolen and sold on the black market. The looting of precious exhibits from the Luhansk Museum, which have ended up on the international art market (Szporluk 2017, 211–246), as well as illegal trade in icons and religious artifacts from Donbas Oblast, which has served as a source of funding for some military groups, are examples. What is more, substantial amounts of Ukrainian cultural property have been illegally removed from the occupied territories to Crimea or into the Russian Federation.

Devastation by the aggressor's troops or criminal groups is another grave threat to the cultural property in Ukraine. Such acts are often premeditated, intended to destroy the enemy's cultural symbols, or accidental, arising from disrespect for cultural heritage. The vandalism of historic buildings in Mariupol by the armed forces has led to the loss of major architectural monuments. The destruction of valuable sacred objects by criminal groups, which have used religious buildings as shelters or storage, has likewise had grievous consequences.

A number of cultural assets have been heavily damaged or destroyed. The list of cases of devastation includes damage to the Kyiv-Pechersk Lavra caused by shooting, which has ruined parts of the monastery's buildings and facilities, as well as damage to Lviv's Old Town, where several historic structures have suffered from artillery shelling. The long-term effects of destruction of cultural property in Ukraine are grave and involve irreversible losses of historic monuments that once served as important testimonies to the history and culture of the Ukrainian nation. Losses such as those at the Donetsk Dramatic Theatre mean that future generations may never be able to see these precious objects in their original form (Kuźniar 2016, 134–167). Another serious effect of the military operations is the weakening of national identity through the destruction of cultural symbols that reinforce a sense of community and national pride. Devastation and looting cause an erosion of cultural heritage that may have a lasting impact on society. Reconstruction is hindered by financial and

technological deficits that impede the process. Rebuilding monuments such as the Kyiv-Pechersk Lavra requires substantial outlays and specialist know-how, posing additional challenges.

The protection of cultural property during the military conflict in Ukraine is therefore not only a moral necessity but also a crucial part of preserving the country's national identity and cultural heritage. It should also be noted that the scale of dangers and risks increase with human physical and technical capabilities and with the development of the methods and means of military operations. The documentation shows that such operations not only destroy physical structures but also hinder the maintenance of the region's cultural identity.

It should be pointed out the military conflict in Ukraine is also leaving its mark on intangible cultural property, such as traditions, customs, language, and cultural practices. War disperses communities – the carriers of these traditions – and disrupts the continuous intergenerational transfer of knowledge. The conflict in eastern Ukraine has substantially affected local communities that, through resettlement and emigration, have lost the ability to practise and foster their cultural traditions. This is, for instance, true of the inhabitants displaced from Donbas, who have had limited contact with their families and limited access to services, which has additionally exacerbated social and cultural divisions (Kulyk 2023, 315).

With reference to the destruction of cultural property in Ukraine, the notion of 'cultural genocide' has been introduced in scholarly discourse (Weiss and Connelly 2017, 8–15) to denote the systematic destruction of cultural heritage as a constituent element of national identity. This concept refers back to Raphael Lemkin, who argued that the destruction of a nation's culture is tantamount to an attempt to erase its identity. In the context of the Russian aggression, such destruction is understood as a series of premeditated actions intended to undermine Ukrainian national and cultural identity (Kyzymienko et al. 2022, 206–234).

The destruction of cultural property is certainly not more important than other war crimes and crimes against humanity, such as the brutal killing of civilians, systemic gender-based violence, sexual violence used as a war tactic, or forced resettlement. It is, however, often cited in conjunction with these other grave violations of human rights and is closely connected to them. When placed alongside reported civilian casualties resulting from strikes, the destruction of cultural property shows that its protection is often inextricably linked to the protection of civilian populations. Moreover, such destruction may hinder post-conflict reconstruction and efforts towards peace.

4 The Legal Protection of Cultural Property During a Military Conflict

The mechanisms for the protection of cultural property in Ukraine are comprehensive and include legal regulations, administrative actions, international collaboration, and civic involvement. Despite the multiple challenges arising from the ongoing military conflict, Ukraine is taking a variety of steps to preserve and protect its rich cultural heritage.

With regard to the domestic legal framework for the protection of cultural property, Ukraine's constitutional law should be noted first, as it guarantees citizens' right to the protection of their cultural heritage and obliges the state to protect cultural monuments⁶. A number of lower-order acts also govern these issues, including the Cultural Heritage Protection Act of 8 June 2000⁷, a crucial legal instrument regulating the protection, restoration, and use of cultural monuments across the country. It provides a legal and administrative framework for actions designed to preserve and protect the state's rich cultural heritage for future generations. The Museums and Museology Act of 29 June 1995⁸ governs museum activities, the protection and restoration of museum collections, and the education and propagation of cultural, scientific, and natural heritage. The Protection of Immovable Cultural Monuments Act of 8 June 2000⁹, which forms part of the Cultural Heritage Protection Act, regulates the protection, restoration, and use of immovable cultural monuments in Ukraine and establishes a legal and administrative framework for the preservation of the state's cultural heritage for future generations. These legal acts support administrative institutions in coordinating protective and restorative action and promote international cooperation and social commitment to the protection of Ukraine's cultural heritage.

The protection of cultural property in Ukraine should also be guaranteed by international treaties ratified by that state¹⁰. These include the Convention for

6 Cf. Article 54 of the Ukrainian Constitution of 28 June 1996, *Uriadoviy Kurier*, No. 129–130, 13 Aug. 1996. The Polish text: *Konstytucja Ukrainy*, 2018. For more on the domestic protection of cultural heritage in Ukraine, see Frolova, 2016, 45–67.

7 Закон України «Про охорону культурної спадщини». Available at: <https://zakon.rada.gov.ua/laws/show/1805-14#Text> [accessed 15 July 2024].

8 Закон України «Про музеї та музейну справу». Available at: <https://zakon.rada.gov.ua/laws/show/249/95-%D0%B2%D1%80#Text> [accessed 15 July 2024].

9 Закон України «Про охорону нерухомих пам'яток культури». Available at: <https://zakon.rada.gov.ua/laws/show/1805-14#Text> [accessed 15 July 2024].

10 For more on international treaties on the protection of cultural property, see Papaioannou, 2017, 257–262.

the Protection of Cultural Property in the Event of Armed Conflict, signed at The Hague on 14 May 1954¹¹, which binds states to protect such assets in times of military conflict. It prohibits looting and destruction and encourages the promotion of international collaboration in this area. Adopted in response to the mass destruction of cultural property during the Second World War, the Convention is one of the most important international treaties intended to protect cultural heritage. It establishes principles for the protection of cultural property both during war and in peacetime, imposing on state parties certain obligations concerning the safeguarding, identification, and recording of cultural property¹². Importantly, the Convention defines 'cultural property' and provides for its special protection. Cultural property, regardless of its origin and ownership, is considered to include: (a) moveable or immovable property of great importance to the cultural heritage of a nation, for example, architectural, artistic, or historic monuments (religious or secular); archaeological sites; groups of buildings of historic or artistic significance; works of art, manuscripts, books, and other objects of historic, artistic, or archaeological significance, as well as scientific collections and important collections of books, archive materials, or reproductions of such property; and (b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined under (a), for example, museums, large libraries, and archival repositories, as well as shelters intended to store the cultural property defined under (a) and (b) in the event of armed conflict, referred to as 'centres containing monuments' (Article 1).

Under the Convention, the protection of cultural property entails both care and respect. The instrument also provides for a regime of special protection, which may be extended to a limited number of refuges for the shelter of moveable cultural property in the event of a military conflict, as well as monument centres and other immovable cultural property of high importance, provided: (a) they are at a sufficient distance from large industrial centres and any important or sensitive facilities, such as airports, radio broadcasting stations, munitions factories, ports or railroad stations of significance, or major transport routes; (b) they are not used for military purposes (Article 8).

In the light of the Convention, for military operations to comply with the standards of international humanitarian law without causing the destruction of cultural property, state authorities and armed forces must collect detailed information in advance about the area of planned operations. This should

11 OJ 1957, No. 46, item 212 as amended. Ukraine joined the treaty on 6 February 1957 as part of the USSR, then reaffirmed it after regaining independence.

12 Cf. Articles 1–5 of the Convention on the Protection of Cultural Property.

include the location and nature of major civilian objects, in particular protected cultural property. On the basis of such information, appropriate precautions can be adopted and informed decisions taken to ensure the protection of cultural property during defensive, offensive, auxiliary, or peace-keeping operations conducted under the auspices of the United Nations. The 1954 Hague Convention is grounded in the humanitarian principle that the protection of cultural heritage is not solely a matter for the state within whose territory cultural property – such as immovable and moveable historic monuments, libraries, archives, or natural objects – is destroyed, but is also of importance to the international community as a whole. Cultural heritage should therefore be subject to international protection; to be effective, such protection must also be ensured in peacetime, through both national and international measures (Sałaciński 2014, 504–509).

Ukraine is also party to the First Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict, dated 14 May 1954¹³, which prohibits the export of cultural property from occupied territories and binds parties to return it at the end of military operations if it was exported illegally. It also ratified the Second Protocol of 26 March 1999¹⁴, which prohibits, in relation to occupied territories, any illegal exportation, removal, or transfer of ownership of cultural property; any archaeological excavations, unless required to protect, document, or preserve cultural property; and any change or modification intended to conceal or destroy cultural, historical or scientific evidence. In light of this treaty, any archaeological works, remaking, or changed usage of cultural property in occupied territories should be undertaken in close cooperation with the state authorities of the occupied territory, circumstances permitting.

Ukraine is a party to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property¹⁵, which is designed to counteract illegal trade in cultural property through regulations on import, export, and the return of stolen goods to their states of origin. It also joined the 1972 UNESCO Convention Concerning the Protection of World Cultural and Natural Heritage¹⁶, which binds states to identify, protect, and safeguard world heritage property within

13 OJ 1957 No. 46, item 212 as amended. Ukraine joined the treaty on 6 February 1957 as part of the USSR, then reaffirmed it after regaining independence.

14 Adopted by Ukraine on 30 April 2020.

15 Ukraine joined the treaty on 10 January 1988 as part of the USSR, then reaffirmed it after regaining independence.

16 Ukraine joined the treaty on 12 October 1988 as part of the USSR, then reaffirmed it after regaining independence.

their territories and to cooperate internationally to protect such property; the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects¹⁷, which establishes rules for the return of stolen or illegally exported cultural property, promotes its return to states of origin, and minimises illegal trade; the 1992 Council of Europe Convention for the Protection of the Archaeological Heritage¹⁸, which binds states to protect archaeological heritage, including through archaeological research according to set standards, and to cooperate internationally in this field; the 1985 European Convention on the Protection of the Architectural Heritage¹⁹, which obliges states to protect architectural heritage through appropriate legislation, restoration, and regeneration of architectural monuments, and to cooperate internationally; and the 2003 Convention on the Safeguarding of the Intangible Cultural Heritage²⁰, binding states to protect intangible cultural heritage – such as traditions, customs, music, and other forms of intangible heritage – through documentation, education, and promotion.

The standards arising from these international agreements to which Ukraine is a state party comprise a wide range of undertakings in the field of cultural heritage protection. First and foremost, they bind Ukraine to protect its cultural property during armed conflicts and to prevent the illegal trade in cultural property by regulating its import, export, and repatriation. Ukraine is also required to identify, record, and protect sites of world, archaeological, and architectural heritage. The treaties further emphasise the safeguarding of intangible cultural heritage, such as traditions and customs. International cooperation and the exchange of information, as well as education and the promotion of awareness of the value of cultural heritage, are key aspects of these standards. These undertakings also encourage the establishment of appropriate domestic regulations and financial mechanisms for the protection of cultural heritage.

It should be noted that the destruction of cultural property during armed conflict, in addition to the domestic regulations and international treaties cited above, engages human rights legislation, which applies directly to communities and individuals – particularly the right to participate in cultural life – since such destruction may prevent access to cultural heritage and its benefits. Article 15 of the International Covenant on Economic, Social, and Cultural

17 Adopted by Ukraine on 28 August 2006.

18 Adopted by Ukraine on 15 May 2004.

19 Adopted by Ukraine on 1 March 2006.

20 Adopted by Ukraine on 27 June 2008.

Rights²¹, whose parties include Russia, Ukraine, and the EU Member States, provides for the right ‘to take part in cultural life’, which may include the right to benefit from the cultural heritage of other persons and communities. Access to and use of any forms of cultural heritage, both tangible and intangible, are thus protected by the human right to participate in cultural life.

As far as the protection of cultural property is concerned, the provisions of the 1998 Rome Statute of the International Criminal Court should also be recalled²², as its adoption was a major step toward the protection of cultural property and cultural heritage sites. The treaty established an authority that criminalises genocide, crimes against humanity, war crimes, and the crime of aggression at the international level. It safeguards these interests by providing a mechanism for enforcing the provisions of earlier international treaties, such as the Geneva and Hague Conventions. In accordance with the Rome Statute, intentional attacks on buildings dedicated to religious, educational, artistic, scientific or charitable purposes, as well as historic monuments, are prohibited; where such objects are damaged, these attacks may be classified as war crimes, that is, unlawful acts committed during armed conflicts by military or civilian personnel in violation of international humanitarian law (Koçak Bilgin and Hazarhun 2023, 307–321).

5 Challenges Connected with the Protection of Cultural Property in Ukraine

The protection of cultural property in Ukraine faces challenges beyond the military conflict, arising from a range of factors, including financial constraints, inconsistent legislation, and insufficient public awareness. Given the limits of space and the subject matter of this publication, the discussion below will focus on challenges related to the ongoing war.

Operations undertaken in many parts of Ukraine since the outbreak of the military conflict undoubtedly pose a grave threat to cultural property and hinder the implementation of protective programmes. In this respect, the restrictions on protection are also significant, as access to cultural property and the ability to safeguard it are severely limited in areas of military operations, leading to further degradation.

21 The International Covenant on Economic, Social, and Cultural Rights, opened for signing in New York on 19 December 1966, OJ 1977, No. 38, item 169.

22 The Rome Statute of the International Criminal Court, drafted in Rome on 17 July 1998, OJ 2003, No. 78, item 708 as amended.

Staff of cultural institutions are sometimes unable to access these areas for safety reasons, which hampers monitoring and repair work. The military conflict has also generated mass population displacement, which in turn leads to cultural sites being abandoned. Such abandoned and inadequately secured objects are exposed to looting and further damage. Migration may also result in the loss of intangible cultural heritage, such as traditions, customs, and languages (Malysh et al. 2021, 262–279).

All of this not only heightens the immediate risks to physical structures, but also creates long-term challenges for the protection and restoration of cultural property. Military conflicts frequently prompt a reallocation of financial resources to military needs, which greatly reduces funding available for cultural heritage protection. Central and local budgets are often insufficient to cover the costs of monument restoration and protection. Moreover, Ukraine's economic situation – especially in the context of conflict and political tensions – does not favour directing funds towards these purposes. Many historic buildings and objects require urgent restoration work, yet funding is scarce. Financial resources are also lacking for preventative measures against destruction (Ivanysko et al. 2024, 192–198).

The international community should therefore exert pressure on the Russian Federation to immediately cease the destruction of Ukrainian cultural property. Only decisive action can protect these valuable resources from further destruction. History shows that the destruction of cultural property has far-reaching consequences that can affect entire generations. It is therefore crucial that international laws be effectively enforced and that the global community work together for the protection of our shared heritage.

Ukraine should take action at both domestic and international levels, as support from international organisations such as UNESCO is crucial. Political and economic stabilisation of these regions is also necessary to ensure the continued protection of cultural heritage sites. This is not an easy task, however, since the disputed territories often suffer from deficits in the financial and technical resources needed for adequate protection of cultural heritage. The economic situation in such areas is commonly unstable, which restricts the ability to allocate sufficient funding for the restoration and protection of cultural items (Malysh et al. 2021, 270).

International collaboration should not be limited to the financial dimension; it should also encompass the documentation of destruction, as well as planning for the reconstruction and protection of surviving cultural objects. Accordingly, continued cooperation with UNESCO and non-governmental organisations is advocated in order to monitor and respond to threats to cultural property.

Challenges connected with the effective protection of Ukrainian cultural property necessitate ongoing improvements to the legal framework. It is not enough for the parties to the conflict to have ratified international treaties such as the Hague and Geneva Conventions and the Rome Statute – these instruments must also be effectively enforced. International bodies, such as the International Criminal Court, should have effective means of holding those responsible to account.

The establishment of international, national, and non-governmental organisations tasked with preparing for the protection of cultural property in times of conflicts may also prove crucial. Beyond planning decision-making sequences and response measures by designated individuals, close cooperation with local communities appears to be the most appropriate approach. Research shows that the protection of cultural heritage without sufficient involvement of local inhabitants often proves ineffective. Enhancing community-based actions should therefore include the development of methods to raise public awareness of damage to cultural heritage, as well as new forms of risk management, not only among those directly responsible for cultural heritage (Roślan 2022, 254–263).

The documentation and digitalisation of cultural property to enhance its protection is another challenge for all those concerned. Digital records and databases can store information that may be later used for the reconstruction of lost buildings and works.

6 Conclusion

The protection of cultural property in the context of the military conflict in Ukraine is a major contemporary challenge. It also requires greater commitment from the international community to the development of global strategies for the protection of cultural property. We believe such strategies should address both prevention and effective response mechanisms, while emphasising the importance of cooperation among nations in preserving heritage for future generations. Cultural property, both tangible and intangible, plays a fundamental role in shaping national identity and transmitting cultural heritage to future generations. In times of military operations, it is particularly vulnerable to destruction, looting, and devastation (Butsenko and Nahachewsky, 2023, 3–14).

The military conflict in Ukraine, initiated by the Russian Federation's annexation of Crimea in 2014 and the subsequent escalation of war operations

in the Donbas region, has caused enormous losses to both the civilian population and cultural heritage. These developments have not only undermined the integrity of Ukrainian national identity, but have also had far-reaching consequences for international relations. The destruction of cultural heritage has highlighted the need for more effective mechanisms to protect global heritage and to strengthen cooperation among states in order to counter similar threats in the future.

Numerous monuments, museums, libraries, and archives have found themselves in the zones of imminent threat. The conflict has created opportunities for looting and illicit trade in artefacts that emphasise the distinct nationality of Ukrainians and the originality of their culture (cf. further Kravchenko et al., 206–234), thereby contributing to the erosion of cultural heritage and the undermining of national identity.

The mechanisms for protecting cultural assets in Ukraine encompass legal regulations, administrative measures, international cooperation, and social commitment. The country is a party to numerous international treaties that provide for the protection of cultural heritage during military conflicts.

The authors propose introducing mechanisms to enable a more rapid response to the destruction of cultural property, such as establishing international teams for emergency heritage protection. Another option would be to create systems of sanctions against states or entities responsible for premeditated destruction of cultural property. A global heritage reconstruction fund could also be crucial, financed by UN Member States to assist countries affected by conflicts in recreating their cultural assets.

A more effective operation of the international legal framework is also necessary. More effective enforcement of international treaties, together with more intensive international collaboration, is required to assure the effective protection of cultural property. The provision of adequate funding for protective measures and for the reconstruction of cultural heritage at both international and domestic levels is likewise essential. The development of educational programmes is becoming crucial, since public education on the role of cultural heritage is of great significance for its protection and preservation. The use of state-of-the-art digital technologies for the documentation and protection of cultural heritage sites is also important.

It should be emphasised that the protection of cultural heritage in Ukraine in the face of the military conflict requires coordinated action at the international, national, and local levels. The Ukrainian experience points to the need for more universal strategies for cultural heritage protection that could be applicable to other military conflicts. The international community's capacity

for rapid response and support for cultural heritage protection may serve as a model for future action on the global scale, underscoring the importance of solidarity and collaboration in the face of shared threats.

A stronger international legal framework, increased funding, the development of educational programmes, as well as the documentation and digitisation of cultural property are necessary for the effective protection and reconstruction of cultural heritage, even the most challenging times.

References

- Bazhenova, Hanna. "Niszczenie cultural heritage Ukrainy w czasie rosyjskiej agresji", *Komentarze Instytutu Europy Środkowej*, no. 1040 (16): 2024, <https://ies.lublin.pl/komentarze/niszczenie-dziedzictwa-kulturowego-ukrainy-w-czasie-rosyjskiej-agresji/>.
- Bazhenova, Hanna. "Protection of Ukraine's Cultural Heritage during the War", *Komentarze Instytutu Europy Środkowej*, no. 595 (107): 2022, <https://ies.lublin.pl/en/comments/protection-of-ukraines-cultural-heritage-during-the-war/>.
- Butsenko, Oleksandr and Nahachewsky, Andriy. "The Two Roles of Intangible Cultural Heritage in Emergencies", *Ukrainian Intangible Cultural Heritage in Emergencies*, 2023, no. 45 (1): 3–14.
- D'Anieri, Paul. *Ukraine and Russia: From Civilized Divorce to Uncivil War*. Cambridge: Cambridge University Press, 2019.
- Dębski, Sławomir. *Między Berlinem a Moskwą. Stosunki niemiecko-sowieckie 1939–1941*. Warszawa: Polski Instytut Spraw Międzynarodowych, 2007.
- Frolova, Olena. "Legal protection of cultural heritage in Ukraine: Challenges and perspectives", *Journal of Cultural Heritage Law*, 2016, no. 12 (3): 45–67.
- Ivanysko, Svitlana, Kazakevych, Gennadii and Shydlovskiy, Pavlo. "Cultural Heritage in the Russo-Ukrainian War: a Victim in the Conflict", *Complutum*, 2024, no. 35 (1): 191–214.
- Koçak Bilgin, Yasemin and Hazarhun, Eda. "The Cultural Heritage Impact of The Russia-Ukrainian War", *Tourism Academic Journal*, vol. 10, no. 2 (2023): 307–321.
- Kocój, Ewa, Kosiek, Tomasz and Szulborska-Łukasiewicz, Joanna (ed.). *Dziedzictwo kulturowe w regionach europejskich. Odkrywanie, ochrona i (re)interpretacja*. Kraków: Wydawnictwo Uniwersytetu Jagiellońskiego, 2019.
- Konstytucja Ukrainy*, tr. by Ewa Toczek. Warszawa: Wydawnictwo Sejmowe, 2018.
- Kowalski, Krzysztof. *O istocie dziedzictwa europejskiego – rozważania*. Kraków: Międzynarodowe Centrum Kultury, 2013.
- Kravchenko, Alla, Kyzymenko, Iryna, Husieva, Nataliia and Krasilnikova, Olga. "Crime against memory or cultural genocide? On the destruction of the cultural heritage

- of Ukraine during Russian aggression in the XXI century". *European Journal of Transformation Studies*, vol. 22, no. 2 (2022): 206–234.
- Kulyk, Volodymyr. "Competing Identities of Ukraine's Russian Speakers", in *Ukraine's Many Faces. Land, People, and Culture Revisited*, ed. by Olena Palko and Gil Manuel Férez. Bielefeld: transcript Verlag, 2023: 315–330.
- Kuźniar, Grzegorz. *Polityka międzynarodowa a konflikty zbrojne na Ukrainie*. Warszawa: Wydawnictwo Naukowe Scholar, 2016.
- Kuźniar, Roman. "Przegląd sytuacji międzynarodowej: aspekty globalne i regionalne". *Rocznik Strategiczny*, no. 23 (2022): 27–48.
- Malysz, Nataliia, Shevchenko, Viktoriya and Tkachuk-Miroshnychenko, Olena. "State policy in the sphere of protection of cultural heritage in Ukraine". *Journal of Cultural Heritage Management and Sustainable Development*, vol. 11/3 (2021): 262–279.
- Merryman, John Henry. "Two Ways of Thinking About Cultural Property", *The American Journal of International Law*, vol. 80, no. 4 (1986): 831–853.
- Nahlik, Stanisław Edward. *Grabież dzieł sztuki. Rodowód zbrodni międzynarodowej*. Wrocław–Kraków: Zakład Narodowy im. Ossolińskich, 1958.
- Papaioannou, Katerina. "The international law on the protection of cultural heritage", *International E-journal of Advances in Social Sciences*, vol. 3, no. 7 (2017): 257–262.
- Plokhyy, Serhii. *The Gates of Europe: A History of Ukraine*. New York: Basic Books, 2015.
- Roslan, Grzegorz. "Protection of cultural heritage in an armed conflict. What Poland can learn from Ukraine?" *Challenges to National Defence in Contemporary Geopolitical Situation*, no. 1 (2022): 254–263.
- Śałaciński, Krzysztof. "Ochrona dóbr kultury w świetle międzynarodowego prawa humanitarnego konfliktów zbrojnych" in *Międzynarodowe prawo humanitarne konfliktów zbrojnych*, ed. by Zbigniew Falkowski and Marcin Marcinko. Warszawa: Wojskowe Centrum Edukacji Obywatelskiej, 2014: 504–509.
- Szmygin, Bogusław. *Światowe dziedzictwo kultury UNESCO – charakterystyka, metodologia, zarządzanie*. Warszawa–Lublin: Wydawnictwo Politechniki Lubelskiej, 2016.
- Szporluk, Roman. *Ukraina: od komunizmu do demokracji*. Kraków: Wydawnictwo Literackie, 2017.
- UNESCO. *A system task team on the post-2015 UN development agenda. Culture: a driver and an enabler of sustainable development. Thematic Think Piece*. Paris: UNESCO Publishing, 2002.
- UNESCO. *Cultural Heritage and Development: A Framework for Action in the Middle East and North Africa*. Paris: UNESCO Publishing, 2013.
- Yekelchyyk, Serhy. *Ukraine: Birth of a Modern Nation*. Oxford: Oxford University Press, 2007.
- Weiss, Thomas G. and Connelly, Nina. *Cultural Cleansing and Mass Atrocities Protecting Cultural Heritage in Armed Conflict Zones*. Los Angeles: J. Paul Getty Trust, 2017.
- Wilson, Andrew. *The Ukrainians: Unexpected Nation*. New Haven: Yale University Press, 2015.

Protection of Cultural Heritage Sites in Ukraine and Poland

A Comparative Legal Analysis Using the Example of Religious Buildings: The Wooden Churches (*Tserkvas*) of the Carpathian Region

Tetyana Karabin

Abstract The article discusses the legal regulation of the protection of cultural heritage in Ukraine and compares it with the requirements of analogous legislation in Poland. This comparison offers an opportunity to align the respective regulatory frameworks, which is important since Ukraine, a candidate for EU accession, must also ensure compliance with EU requirements concerning the regulation of cultural heritage protection. The area in which these legal regulations can most readily be compared is the protection of religious buildings, in particular, the wooden churches in the Carpathian region of Poland and Ukraine.

These are historically valuable, unique wooden churches that have been inscribed on the UNESCO World Heritage List. Accordingly, the cultural, historic, and religious value of these objects is the same for both Poland and Ukraine. Their protection should therefore be pursued in parallel by Ukraine and Poland, the latter being an EU Member State. Nevertheless, the article investigates the hypothesis that the relevant legal regulations differ.

Keywords religious and cultural heritage – religious buildings – protection – Ukrainian regulation – Polish regulation

1 Introduction

In the modern world, it is undeniable that protecting cultural heritage is an essential task of states and can help 'build a vision for the future' (Dworzecki et al. 2020, 178). This task aims to preserve, use, and popularise cultural heritage objects and disseminate information about them. However, no matter how obvious this task may seem at first glance, in today's globalised world it involves a number of challenges, because under the influence of globalisation and changes in social structures, heritage is exposed to new threats.

In particular, in the current context of the emergence and development of new social movements and relationships, social values and traditional practices are also changing, alongside processes of commercialisation and standardisation. All of this has an impact and threatens the preservation of unique cultural heritage, whereas ‘the intention in conserving monuments is to safeguard them no less as works of art than as historical evidence’¹.

Today, the question of what constitutes heritage and what should be protected is resounding in a new way, reflecting changing social realities. Perhaps the most succinct definition of heritage is found in the *Conservation Principles, Policies and Guidance* of the Historic Buildings and Monuments Commission for England, where heritage is understood as all inherited resources that people value for reasons beyond mere utility (Commission for England Heritage: *Conservation Principles* 2008, 71).

The determination of an object’s importance – or lack thereof – for preservation is variable, rather than static, and reflects general ideas about its value and quality, according to which it is regarded as desirable, useful, estimable, important, and so on (de la Torre 2013, 156).

One factor influencing the assessment of the value of a particular heritage item is the risk of its loss. This lies at the centre of the manipulation of discursive boundaries in heritage management and conservation (Rico 2015, 158) and has prompted specialist scholarly literature to justify the concept of ‘heritage at risk’. However, the risk of loss alone does not make an object valuable; conversely, a low risk of damage to an object does not in itself indicate insignificance. Risk is a factor that prompts relevant bodies and organisations to designate an object and to determine the legal regime for its preservation, protection, restoration, and so forth. This understanding, the sequence of state action, and international intervention in preservation can be traced in the case of the wooden churches of the Carpathian region, which in 2013 were inscribed on the UNESCO World Heritage List².

1 The International Charter for the Conservation and Restoration of Monuments and Sites (the Venice Charter 1964); the 2nd International Congress of Architects and Technicians of Historic Monuments, Venice, 1964. Adopted by ICOMOS in 1965.

2 Decision 37 COM 8B.37. Adopted by the World Heritage Committee at its 37th session (Phnom Penh, 2013). Wooden Tserkvas of the Carpathian Region in Poland and Ukraine (Poland/Ukraine).

2 Risks

Geographically, the wooden churches in question are located in the Polish and Ukrainian Carpathian mountain ranges and represent the ecclesiastical Orthodox timber-building tradition of the Slavic countries. They were constructed by communities of the Eastern Orthodox and Greek Catholic faiths between the sixteenth and nineteenth centuries. Owing to their religious origin, these buildings are referred to as *'tserkvas'*, as opposed to *'kościół (kostel)*, which is used to denote Catholic sacred buildings.

The church buildings inscribed on the UNESCO World Heritage List include several Lemko examples at Brunary Wyżne, Kwiatów, Owczary, Powroźnik, and Turzańsk in the Polish Western Carpathians; Boyko churches to the south-east at Smolnik (Poland) and at Uzhok and Matkiv (Ukraine); Halych items in the Northern Carpathians at Chotyńiec and Radruż (Poland) and at Potelych, Zhovkva, Rohatyn, and Drohobych (Ukraine); and Hutsul examples at Nyzhniy Verbizh and Yasynia in the Ukrainian Eastern Carpathians. Overall, these are considered the most representative of the distinctive characteristics of the relevant cultural types, selected from among the remaining examples of each type. However, the inclusion of these buildings does not deny or diminish the cultural, architectural, and historic value of other wooden religious structures in the region that are not listed but are steadily disappearing or being destroyed. The declaration of 'unity in diversity' also extends to other comparable objects built in different parts of the Carpathians and now located in several countries (Slovakia, Poland, Ukraine, and Romania). They constitute the architectural expressions of the multi-national and multi-religious communities that have lived in this region for centuries (Eleftheria 2015).

With regard to the disappearance of this type of cultural heritage since the beginning of the twentieth century, old wooden buildings have increasingly been replaced by stone churches (Quattrone 2023, 2). In the twenty-first century, the situation has only worsened.

The return of religious buildings located in Ukraine to religious communities in the 1990s led to tensions between the interests of particular religious groups and the state, which was anxious to protect and preserve the relevant objects of cultural heritage (Bilash et al. 2021, 10). Heritage objects that have become the property of religious organisations are often perceived by these organisations not as values or as the historic heritage of the entire nation, but in purely functional terms (Tokman 2014). Unfortunately, there are cases of unauthorised reconstruction of ancient churches, changes to their decoration, and violations of maintenance regimes (Bondarenko et al. 2008). Most clergy

dream of large new churches and are prepared to destroy the existing small, old churches, unaware that a better church cannot be built with modern bricks or metal and plastic and that therefore, preserving what our forefathers left is important (Quattrone, Giuliana 2023, 3). An apparent result of these problems has been the mass destruction of iconic architectural monuments handed over to religious communities, including through fires, some caused by arson (Boyko 2008). Statistical data show that 164 churches burned down in Ukraine in the period 2000–2006 alone, and that since 1991, approximately 200 ancient churches have burned down or been deliberately dismantled (Kot 2015, 80–81).

The risk of destruction of objects of cultural and historic value is a global problem that became particularly acute after the devastation of the World Wars and has not diminished even under contemporary conditions. The United Nations Educational, Scientific and Cultural Organization (UNESCO) was founded to promote international cooperation in the humanitarian sphere, including culture. As a specialised agency of the United Nations, UNESCO contributes, *inter alia*, to sustainable development and culture (UNESCO. General Conference, 34th, 2007. Medium-term Strategy, 2008–2013. C/4. 40 p.). To this end, the organisation establishes and safeguards World Heritage Sites of cultural and natural significance that are considered to be of outstanding value to humanity. The notion of heritage at risk has played a key role in shaping UNESCO's mission, with heritage itself understood as a 'cultural refugee' whose rescue may serve as a panacea for cultural recovery and peace-building efforts.

3 Value

Therefore, even though the selection of objects deemed worthy of preservation as an 'inheritance' for future generations is an 'active choice' (Tsivolas 2019, 5) that is partly politically motivated, there are nonetheless objective criteria and indicators for assessing the value of particular objects subject to protection.

A peculiar indicator of the value of wooden *tserkvas* is their inclusion on the World Heritage List. The direct criteria used to assess an object as having Outstanding Universal Value for cultural heritage are the following:

1. it represents a masterpiece of human creative genius;
2. it exhibits an important interchange of human values, over a span of time or within a cultural area of the world, and developments in architecture or technology, monumental arts, town planning, or landscape design;
3. it bears a unique or at least exceptional testimony to a cultural tradition or to a civilisation that is living or that has disappeared;

4. it is an outstanding example of a type of building, architectural, or technological ensemble or landscape that illustrates (a) significant stage(s) in human history;
5. it is an outstanding example of a traditional human settlement, land use, or sea use that is representative of a culture (or cultures) or human interaction with the environment, especially when it has become vulnerable under the impact of irreversible change;
6. it is directly or tangibly associated with events or living traditions, ideas, or beliefs, with artistic and literary works of outstanding universal significance³.

An object nominated for the list must also meet the conditions of integrity and authenticity and must have an adequate protection and management system to ensure its safeguarding.

Some wooden *tserkvas* of the Carpathian region were inscribed on the UNESCO World Heritage List on the basis of criteria (3) and (4). Criterion (3) was satisfied by the fact that they bear an exceptional testimony to a distinct ecclesiastical building tradition, grounded in the mainstream traditions of the Orthodox Church and interwoven with a local architectural language. Their structures, designs, and decorative schemes are characteristic of the cultural traditions of the communities resident in the Carpathian region and illustrate a multiplicity of symbolic references and sacred meanings related to the tradition⁴.

Criterion (4) was met on the grounds that the *tserkvas* are an outstanding example of a group of buildings in the traditional log-construction type, representing an important historical stage in the history of architectural design in the Carpathian region. Drawing on building traditions for Orthodox ecclesiastical purposes and adapted in accordance with the local cultural traditions, the *tserkvas*, as they developed from the sixteenth to the nineteenth centuries, reflect the sacred references of the resident communities⁵.

All elements necessary to express the value of the properties are retained within their boundaries, including perimeter walls or fences with gateways and, where present, bell towers, graveyards, and ancillary buildings. The buildings are not threatened by development or neglect. The perimeter walls or

3 Operational Guidelines for the Implementation of the World Heritage Convention. UNESCO. WHC.23/01. 24 September 2023.

4 World Heritage Committee: Decisions WHC-13/37.COM/20 adopted at the 37th session (Phnom Penh, 2013). <https://whc.unesco.org/archive/2013/whc13-37com-20-en.pdf>.

5 Ibid.

fences, with trees planted along them, constitute a clearly recognisable zone or landmark.

Thus, the buildings have historic, scientific, social, and artistic value because they are characterised by authenticity, accessibility, and integrity, and because they represent a particular type (*Wooden tserkvas of the Carpathian region in Poland and Ukraine* 2011, 169–172). Accordingly, the objects' cultural, historic, and religious value is certainly the same for Poland and Ukraine.

It should also be noted that the right of each religious community to shape, regulate, and administer its cultural property *sui iuris* (i.e., pursuant to its own customs, beliefs, and canonical traditions) (Tsivolas 2019, 7) is not limited by the classification of a monument as protected. The *tserkvas* in Poland are owned by Christian churches (Roman Catholic, Greek Catholic, and Orthodox), except for the *tserkva* in Radruż, which is owned by the state and used as a museum. In Ukraine, the *tserkvas* in the villages of Yasynia, Uzhok, Matkiv, and Nyzhniy Verbizh belong to Christian churches (Ukrainian Catholic and various Orthodox denominations) represented by governing bishops and parishes. The *tserkvas* in the towns of Rohatyn and Drohobych are owned by the state and used as museums. In the town of Zhovkva and the village of Potelych, the *tserkvas* are owned by the state and made available to local religious communities.

4 Terminological Differences

The inclusion of a shared protected object in the monument-protection legislation of both countries has led to a number of scholarly studies comparing their legal regulations for cultural heritage protection (Herych 2013; Gleń 2015; Herych 2015; Mazur and Myshchak 2019; Kharkovenko 2022). It has also prompted studies in Ukraine of Poland's state management system for cultural heritage protection (Stepaniuk 2020).

However, the relevant starting point for each countries' decision regarding an appropriate protection regime remains the World Heritage Committee's decision establishing that wooden churches included in the UNESCO World Heritage List should be protected at the highest level. In Poland, this is achieved through inclusion in the National Heritage Register under the Act on the Protection and Care of Historic Monuments (2003). In Ukraine, it is achieved through inclusion in the State Register of Immovable Historic Monuments under the Law on the Protection of Cultural Heritage (2000). Accordingly, for the purposes of this article, it is necessary to analyse and compare the highest levels of cultural heritage protection in Ukraine and Poland.

Ukrainian legislation on the protection of cultural heritage exhibits several shortcomings. Its most evident drawback is a lack of terminological clarity, with legislative acts employing various concepts, including 'object of cultural heritage', 'monument of cultural heritage', 'monument of history and culture', 'cultural values', and 'cultural goods', among others (Wieser et al. 2023, 245; Bilash 2022, 365–366). Moreover, cultural heritage protection is governed by several normative acts, and two registers are maintained (the State Register of National Cultural Heritage, and the State Register of Immovable Monuments of Ukraine) in addition to the National List of Elements of the Intangible Cultural Heritage of Ukraine.

In Ukraine, immovable cultural heritage falls within the scope of the Law 'On the Protection of Cultural Heritage' of 6 August 2000 No.1805-III, provided it is classified as an object of cultural heritage. Under this law, the concept of cultural heritage objects is limited to immovable items. In particular, such objects include landmarks; structures (creations); complexes (assemblies) and their parts; as well as territories or water bodies and other natural, natural-anthropogenic, or artificial objects, regardless of their state of preservation, that have come down to us and are valued from an archaeological, aesthetic, ethnological, historic, architectural, artistic, scientific, or artistic perspective and have preserved their authenticity. This interpretation is often criticised, since it does not fully correspond to the broad understanding of the term 'cultural heritage' as set out in the 2005 Council of Europe Framework Convention on the Importance of Cultural Heritage for Society, signed on behalf of Ukraine in 2007 and in force since 2013⁶.

Nevertheless, the terminological definitions in Ukraine's national law correspond to the provisions of the 1972 UNESCO Convention on the Protection of the World Cultural and Natural Heritage⁷. This is important in the context

6 Cultural heritage is defined here as a set of resources inherited from the past that people, regardless of their affiliations, consider to be a reflection and expression of their values, beliefs, knowledge, and traditions. It encompasses all aspects of the environment that have emerged due to interactions over time between people and places. Therefore, it covers a range of objects that is broader than immovable monuments.

7 In the 1972 UNESCO Convention, cultural heritage is defined in Article 1 as:
"– monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science;
"– groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science;

of analysing the protection and preservation of wooden churches in the Carpathian region. In addition, records of immovable monuments of cultural and archaeological significance are maintained in the unified State Register of Immovable Monuments of Ukraine⁸, which is actively compiled by the Ministry of Culture and Information Policy under the categories of monuments of national and of local importance.

The separate legal regulation of the protection of immovable objects of cultural heritage in Ukraine is also supported by judicial practice. In particular, the Grand Chamber of the Supreme Court has noted that immovable objects of cultural heritage, unlike other immovable property, have a unique legal nature. They possess specific characteristics that give them not only value as immovable property ('material' value), but also as historic and cultural assets ('intangible', ideological value). Accordingly, the destruction of an immovable object of cultural heritage causes damage not only to its owner or possessor (who loses immovable property), but also to society as a whole, because the 'intangible' historic and cultural value formed over generations is lost. For these reasons, immovable objects of cultural heritage require special protection, including by state authorities and local self-government bodies, for whom such protection is a priority area of activity (Decree of 12 September 2023, Case No. 910/8413 /21). Therefore, the protection of immovable objects of cultural heritage is a task of the Ukrainian state; the priority of this duty is embedded in national legislation, of which an integral part consists of ratified international conventions.

Heritage protection in Poland is based on the Act of 23 July 2003 on the Protection and Care of Historic Monuments. It specifies the following categories of monuments: immovable monuments, in particular cultural landscapes; urban and rural layouts, as well as building ensembles; works of architecture and the construction industry; sites of technology; parks, gardens, and other forms of designed greenery; movable monuments, in particular works of graphic art, craftsmanship, and applied art; collections of objects assembled and arranged according to the concepts of their creators; numismatic items, historical mementoes, including in particular military accessories, standards, stamps, badges, medals, and decorations; products of technology; library materials; musical instruments; works of folk art, handicrafts and other ethnographic objects; and items commemorating historic events or the activities

"— sites: works of man or the combined works of man and nature, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological, or anthropological point of view."

8 See: <https://mcsc.gov.ua/kulturna-spadshchyna/derzhavny-reiestr-nerukhomykh-pam-iatok-ukrainy/> [accessed 31 Jan. 2026].

of outstanding personalities or institutions; as well as archaeological monuments, in particular the ground remains of prehistoric and historical settlements, cemeteries, barrows, and relics of economic, religious, and artistic activity.

Thus, compared with the Ukrainian framework law, the Act's regulatory scope is broader, since it also covers movable and archaeological objects. This corresponds to a broad understanding of cultural heritage as encompassing tangible (castles, museums, works of art), intangible (songs, traditions, etc.), and digital (born-digital and digitised) heritage. It also includes monuments, sites, landscapes, skills, practices, knowledge, and expressions of human creativity.

5 State Registration

Despite terminological differences, the highest level of protection under the national legislation of Ukraine and Poland provides for similar protection regimes, including special rules for the state registration of cultural heritage objects, the exercise of ownership rights in respect of such objects (the implementation of owners' rights and obligations, and the conclusion of protection agreements), as well as the management and monitoring of cultural heritage objects.

All immovable monuments in Ukraine are entered in the State Register of Immovable Monuments of Ukraine. Accordingly, the highest level of protection is afforded to monuments of national importance that are recorded in the Register under this category. To enter an object of cultural heritage of national importance in the Register, a relevant decision must be adopted by the Cabinet of Ministers of Ukraine; that is, a government act is necessary. It should be noted that the wooden churches currently on the UNESCO World Heritage List were entered in the Register at different times, some of them only after their inclusion on the UNESCO list – for example, the churches in the villages of Uzhok and Yasinya in 2018, the church in the town of Nizhny Verbizh in 2012, and the churches of the city of Rohatyn in 2024.

Under Poland's Act on the Protection and Care of Historic Monuments, immovable monuments are entered into the Registry of Cultural Property by a decision of the Regional Conservator of Monuments, either *ex officio* or at the request of the owner of an immovable monument or the user of the land plot on which the monument is located. The monument's surroundings, as well as its geographical, historical, or traditional names, may also be entered in the Registry. An immovable monument's entry in the Registry, made at the

request of a regional conservator of monuments, is recorded in the land register and real-estate cadastre and officially published in a voivodeship gazette. The regional conservator of monuments must immediately inform the competent superior authority of both the initiation of proceedings concerning an entry in the Registry and the completion of those proceedings. Thus, local self-government bodies in Poland have a broader scope of competence in the field of cultural heritage protection than their counterparts in Ukraine.

A distinctive feature of Ukrainian legislation on cultural heritage protection is the statutory obligation imposed on monument owners to conclude a protection agreement with a cultural heritage protection authority. A protection agreement is an administrative contract concluded between the owner of a monument and the competent cultural heritage protection body, establishing the regime for use of the cultural heritage monument, including the territory on which it is located. Such agreements are intended to specify the conditions governing monument use, the types and terms of restoration, conservation, and repair works, measures for the arrangement of the surrounding area, and other protective measures as determined necessary by the relevant of cultural heritage protection authority.

6 Administration and Monitoring

The legal status of wooden churches inscribed on the UNESCO list, in both Ukraine and Poland, is generally equivalent to monuments protected at the highest level, taking into account their specific features. The nomination of a wooden church ensemble to the World Heritage List requires Ukraine and Poland to implement a monitoring system to maintain their physical condition and to eliminate potential threats. This includes restrictions on land-use development within the immediate vicinity of the properties and their buffer zones. A special feature of this joint nomination is that non-compliance with legal requirements in relation to even one of the sixteen churches can lead to the deletion of the entire site 'Wooden Churches of the Carpathian Region of Ukraine and Poland' from the UNESCO list (Marusyk 2023, 68). Ensuring appropriate conditions is therefore a shared responsibility of both countries.

UNESCO Decision No. 1424 on the nomination itself contains specific recommendations for the organisation of protection and management. In particular, it provides that the management of the serial property will be coordinated by a steering committee acting on behalf of the Ministers for Culture of both countries, which will work with the administrators of the *tserkvas* to ensure their conservation and to initiate training courses. Experts in various

fields will be invited to the steering committee meetings, and the committee is also obliged to invite the owners and curators of the properties, as well as ecclesiastical and secular authorities, to participate in ongoing cooperation with regional and local self-government authorities and restoration services. In this context, it is important to note that monitoring measures are aimed at verifying compliance with cultural heritage protection legislation and the proper maintenance and use of the monuments, rather than interfering with the religious or economic activities of the owners (Clause 54 of the ruling of the Supreme Court of Ukraine, panel of judges of the Cassation Administrative Court, 16 March 2020, Case No. 826/6522/15).

However, the primary bodies entrusted with powers of protection and monitoring are the relevant national ministries. In Poland, an extensive system of state administrative bodies is involved in heritage protection, including the Department of Monument Protection and the Department of Cultural Heritage within the Ministry of Culture and National Heritage, as well as voivodeship administrations for the protection of monuments headed by the General Custodian of Monuments. The National Institute of Cultural Heritage provides expert support to the Ministry and professional assistance in updating and publishing monument registers, advising the minister, and carrying out several other related tasks.

In Ukraine, the Ministry of Culture and Information Policy of Ukraine is the central executive authority entrusted with formulating state policy in the field of cultural heritage protection. Since the legal status of the wooden churches is comparable to that of national monuments, the Ministry approves: their alienation or transfer by their owners to other persons for possession, use, or management; protection agreements for monuments of national importance; scientific project documentation for the conservation, restoration, rehabilitation, museumification, repair, and adaptation of monuments of national importance; and programmes and projects involving urban-planning, architectural, and landscape interventions affecting monuments of national importance and their territories, as well as historical and cultural reserves, historic and cultural protected territories, protection zones, protected archaeological territories, and the historical areas of inhabited places, among other powers. The Ministry reports annually to the Cabinet of Ministers of Ukraine and the public on the state of preservation of cultural heritage sites, and also it submits to the government and the UNESCO World Heritage Committee an annual report on the state of preservation of world heritage sites and on the implementation of the Convention and the decisions of the UNESCO World Heritage Committee. Recommendations of the UNESCO World Heritage Committee regarding urban-planning projects, architectural and landscape transformations, land

reclamation, roads, and works affecting World Heritage sites, their territories, and buffer zones are mandatory.

The Ministry also establishes a supervisory board for each World Heritage site, including the wooden churches located in the territory of Ukraine inscribed in the UNESCO list, and approves its composition. The supervisory board is a special body whose main tasks are:

- monitoring the implementation of the management plan of the World Heritage site;
- reviewing the management plan of the site and submitting proposals for amendments to the site's management body;
- approving the annual report on the site's state of conservation and the report on the state of implementation of its management plan;
- providing recommendations on organisational, personnel, design, and financial measures for the preservation of the site;
- resolving disagreements concerning the development and preservation of the site.

Thus, the wooden *tserkvas* of the Carpathian region possess immense historic, social, and artistic value, as they are authentic, accessible, and integral. At the same time, there is a real threat of their destruction and disappearance, since small wooden structures often do not fully meet the needs of modern religious communities, and their preservation and restoration are financially prohibitive for small communities living in mountainous areas. For this reason, Poland and Ukraine are taking appropriate measures to preserve these wooden churches for future generations. Although legal regulations regarding cultural heritage protection in Poland and Ukraine differ in some respects that are currently not significant, the joint inscription of these cultural heritage monuments on the UNESCO list encourages mutual study of the neighbouring state's legal regulations, the sharing of administrative experience, and the dissemination of best practices.

References

- Commission for England Heritage. *Conservation Principles, Policies and Guidance of Historic Buildings and Monuments*, published 23 April 2008. <https://historicengland.org.uk/images-books/publications/conservation-principles-sustainable-management-historic-environment/>
- Bilash, Oleksandr. "Pravo okhorony kul'turnoyi spadshchyny", in *Osoblyve administratyvne pravo*, ed. by Bernd Wiezer, Yaroslav Lazur, Tetyana Karabin, and Oleksandr Bilash. Odessa: "Helvetyka", 2022: 464.

- Bilash, Oleksandr, Karabin, Tetyana, and Savchyn, Mykhailo, "Preservation and protection of the cultural heritage of religious purposes in Ukraine", in *KOŚCIÓŁ I PRAWO*. no. 10(23) (2021): 9–30.
- Bondarenko, Olena, Hanna Putova, and Pavlo Koval'ov, "Znyshchennya pam'yatok istoriyi ta kul'tury Kyveva. Styslyy ohlyad za 2007 rik", in *Forum spasennya Kyveva*, <http://forumspaskiev.org.ua/databox/2007/05/17147.php>, 2008
- Boyko, Oksana. "Tserkvy horyat' v nezalezhniy Ukraini, abo Bezkarist' vandaliv" in *Zakhidna analitychna hrupa*, <http://arhiv.orthodoxy.org.ua/uk/2008/03/19/14965.html>, 2008
- de la Torre, Marta. "Values and Heritage Conservation", in *Heritage & Society* 6(2) (2013): 155–166.
- Dworzecki, Jacek, Nowicka, Izabela, Urbanek, Andrzej and Kwiatkowski, Adam, "Protection of national heritage in the light of the applicable law and the actions provided in this area by police in Poland", in *Muzeologia a kultúrne dedičstvo* 8(4) (2020): 177–198.
- Eleftheria, Tsakanika. "Inscription in the Unesco World Heritage List of the Wooden Tserkvas of the Carpathian Region in Poland and Ukraine", in *Structural Health Assessment of Timber Structures (Proceedings of the International Conference on Structural Health Assessment of Timber Structures, SHATIS'15 9–11 September 2015, Wrocław, Poland)*, ed. by Jerzy JasieŹko and Tomasz Nowak. Wrocław: Dolnośląskie Wydawnictwo Edukacyjne DWE, 2015: 3–21
- Gleń, Piotr. "Cerkwie wpisane na Listę Światowego Dziedzictwa UNESCO – kryteria wyboru", *Budownictwo i Architektura*, 14(3) (2015): 235–240.
- Herych, Volodymyr. "Polish-Ukrainian Cooperation Concerning Cultural Heritage Protection on the Example of the City of Zhovkva (Ukraine)", in *Barometr Regionalny. Analizy i Prognozy*, vol. 12 no. 4 (2015): 81–90.
- Herych, Volodymyr. "Wooden Tserkvas of the Carpathian Region in the UNESCO World Heritage List. Common Problems and Local Solutions", in *Barometr Regionalny*, vol. 11 no. 4 (2013): 43–51.
- Kharkovenko, Roman. "Porivnyal'nyy analiz pam'yatkookhoronnoho zakonodavstva Pol'shchi ta Ukrainy", in *Ukrayins'kyi istorychnyy zhurnal*, no. 3 (2022): 205–218.
- Kot, Serhiy I. "Istorychnyy dosvid ta aktual'ni problemy zberezhenntya pam'yatok istoriyi ta kul'tury Ukrainy", in *Kul'turna spadshchyna v konteksti «Zvodu pam'yatok istoriyi ta kul'tury Ukrainy»*, ed. by Kot Serhiy, Denysenko Halyna, Ivakin Hlib, Katarhina Tetyana, Kovpanenko Nataliya, Skrypnyk Petro, Tymofiyenko Volodymyr, Tytova Olena, and Fedorova Larysa. Kyiv: Instytut istoriyi Ukrainy, 2015: 486.
- Marusyk, Tamara. "The Cooperation between Ukraine and Poland in the Context of Preservation of UNESCO World Heritage Sites", *Wschód Europy. Studia humanistyczno-społeczne*, 9(1) (2023): 65–78.

- Mazur, Tamara and Myshchak, Ivan. "Zakonodavstvo u sferi okhorony kul'turnoyi spadshchyny v Ukraini ta Pol'shchi: porivnyal'nyy Analiz", in *Visnyk Natsional'noyi akademiyi kerivnykh kadrov kul'tury i mystetstv* no. 1 (2019): 166–172.
- Quattrone, Giuliana. "Endangered Religious Cultural Heritage Spatial Distribution, Tourism Design, and Heritage Narratives from a Protection and Enhancement Perspective in the Carpathian Region", *The Academic Research Community Publication* November 2023: 1–8.
- Rico, Trinidad. "The Authority and Autonomy of a Dominant Preservation Framework", in *Heritage Keywords: Rhetoric and Redescription in Cultural Heritage*, Samuels, Kathryn Lafrenz, and Trinidad Rico (eds.). University Press of Colorado, 2015: 147–162.
- Stepaniuk, Sofia. "Pol's'kyi dosvid derzhavnoho upravlinnya u sferi okhorony pam'ya-tok", in *Litopys Volyni. Vseukrayins'kyi naukovyy chasopys* no. 23 (2020): 165–170.
- Tokman, Volodymyr. "Problemy zberezheniya ta zakhystu kul'turno-relihiynykh tsinnostey Ukrainy. Analitychna zapyska" <https://niss.gov.ua/doslidzhennya/gumani-tarniy-rozvitok/problemi-zberezheniya-ta-zakhystu-kulturno-relihiynykh>, 2014.
- Tsivolas, Theodosios. "The Legal Foundations of Religious Cultural Heritage Protection", *Religions* 10(4) (2019): 270–283.
- UNESCO: Medium-term Strategy, 2008–2013. General 34th Conference, 2007. C/4. p. 40.
- UNESCO. 2023. Operational Guidelines for the Implementation of the World Heritage Convention. WHC.23/01. 24 September.
- Wieser, Bernd, Lazur, Yaroslav, Karabin, Tetyana and Bilash, Oleksandr (ed.), *Besonderes Verwaltungsrecht der Ukraine*. Vienna/Berlin: Verlag Österreich GmbH/Berliner Wissenschafts-Verlag, 2023.
- Wooden tserkvas of the Carpathian region in Poland and Ukraine: Cultural property of the Republic of Poland and Ukraine for inclusion in the World Heritage List*. Warsaw–Kyiv 2011: 291.
- World Heritage Committee: Decisions WHC-13/37.COM/20 adopted at the 37th session (Phnom Penh, 2013). <https://whc.unesco.org/archive/2013/whc13-37com-20-en.pdf>.

The European Network of Regional Culinary Heritage as an Instrument of Support for Regional Identities

Monika Żuchowska-Grzywacz

Abstract Systems of food-quality support play a crucial role in promoting and protecting the unique culinary traditions of Europe's diverse regions. This paper analyses the role of the European Network of Regional Culinary Heritage (ENRCH), in comparison with selected parallel initiatives, as an effective instrument for supporting regional identities by encouraging the discovery and promotion of local flavours, cooking techniques, and regional products. ENRCH enabled the sharing of experience and cooperation among various regions, thereby strengthening bonds within local communities. By organising festivals and cooking workshops and promoting local producers, the Network helped to build cultural awareness of culinary heritage and to generate economic value. It also functioned as an educational platform, promoting sustainable cooking and farming practices and care for the natural environment. By disseminating traditional methods of food production and consumption, the Network fostered the preservation of biodiversity and unique regional ecosystems. By integrating culinary heritage into culture tourism, the Network stimulated local economic development, promoting culinary attractions as an inextricable part of travel around European regions. In effect, the Network not only helped to preserve regional identities but also contributed to a growing tourist interest and generated additional sources of income for local communities.

It is no accident the foregoing is couched in the past tense, since organisational changes of ENRCH's structures have had a considerable impact on its operation and on the promotion of support for regional identities. The processes within ENRCH not only highlight its underlying assumptions, but also demonstrate the significance of management and of actions connected with politico-legal aspects for quality and effectiveness.

Given the nature of the subject matter, alongside a few monographs, the analysis draws extensively on online and journalist materials, as well as on by-laws. Although ENRCH is of predominantly local importance, observing its effect on reinforcing regional identities has revealed a range of additional aspects.

Keywords regional identity – quality systems – interregional cooperation – development of local economy – significance of cultural heritage

1 Introduction

Food quality systems play an important role in supporting national identity, particularly through legal regulations that protect and promote unique products associated with a given country or region. Many European states, including Poland, provide special legal frameworks to identify, certify, and protect products linked to national and regional culinary cultures (Mrożek 2023, 7). Such systems operate at various levels: international, EU, national, and local. They are primarily designed to guarantee that food available on the market meets defined standards of health safety and quality, thereby fostering consumer trust. Food quality support systems therefore play a major role in ensuring access to safe, healthy, and quality products (Sikorska 2017, 13). Legal protection mechanisms also stimulate local economic development, since quality systems enhance the prestige and market value of products. Legal regulations additionally help counteract illegal imitation that could undermine the value of traditional products. It should be noted, however, that participation in a quality system entails additional costs for entrepreneurs, since changes must often be implemented at the farm level and compliance with the system's standards requires mandatory auditing (Systemy jakości produktów rolnych i środków spożywczych. Wsparcie na przystępowanie do systemów jakości, 2021).

The scale of a given food quality support system also matters. Systems operating on the EU level, for instance, benefit from the organisation's institutional apparatus and therefore have a different standing than independent initiatives. The latter, such as the European Network of Regional Culinary Heritage (ENRCH), have built their status over years by fostering the confidence of members and consumers.

2 Selected Systems of Food Quality Support as a Background to the European Network of Regional Culinary Heritage

There are numerous food quality systems operating at global, European, and local levels. They entail various forms of legal protection and rules of operation. Given their number, it is impossible to describe them in anything approaching an exhaustive manner, especially since they range from highly formalised systems established by public authorities to schemes operated on the basis of private standards. Owing to constraints of space, only selected systems that may be linked to ENRCH are discussed here, in order to highlight particular aspects of the protection of regional identity.

At the European Union level, systems protecting the marking and naming of regional products are among the most recognisable food quality schemes. Systems such as the Protected Designation of Origin (PDO), Protected Geographical Indications (PGI), and Traditional Speciality Guaranteed (TSG) are intended to promote products that are closely associated with a certain region and produced in accordance with traditional methods. These designations are regulated under EU law and serve to protect food products of a specified origin or tradition. Products covered by these systems must meet precise requirements to guarantee their quality, authenticity, and connection to a given region (Calka 2008, 109–110). Beyond safeguarding culinary heritage, these schemes also contribute to local economic development. As a result, protected products help to uphold national or regional identities while functioning as recognisable symbols of quality on the international stage.

Organic certification systems constitute another major pillar of food quality support. Organic products must meet strict cultivation and husbandry requirements, such as a minimal use of chemicals and the adoption of sustainable production methods (Leśkiewicz 2010, 123–124). Organic certification attests that a given product has been produced in accordance with the principles of environmentally friendly farming, thereby guaranteeing its quality and minimising adverse environmental impacts (Siebeneicher 1997, 33). Such products are not directly or formally linked to a particular region, although they are often deeply associated with the culture of a given area.

Modern agriculture also makes use of systems such as GlobalG.A.P., which promotes good agricultural practices worldwide. GlobalG.A.P. is an international standard focused on food safety, environmental protection, worker safety, and animal welfare. GlobalG.A.P. certification helps producers meet the requirements of customers and retailers while ensuring the production processes comply with international standards. Although GlobalG.A.P. does not focus directly on regional products, it may nonetheless play an important role in their manufacture and promotion, particularly by helping to ensure high levels of food quality and safety. GlobalG.A.P. introduces requirements for responsible farming, including sustainable water management, reduced pesticide use, and the protection of soil and biodiversity, as well as occupational health and safety. These guidelines may be applied by both large farms and small producers, which makes the standard universal. Regional products, often relying on traditional production methods and local raw materials, can use GlobalG.A.P. certification to demonstrate that their production processes conform to best agricultural practices and meet international standards. As a result, such products may gain greater consumer trust and compete more effectively in domestic and international markets. In the case of culinary

heritage products, GlobalG.A.P. can help combine tradition with contemporary requirements for food safety and environmental protection. Although GlobalG.A.P. is not specific to any region or tradition, its implementation may support producers in maintaining high quality and contribute to wider promotion of local products. From a legal perspective, GlobalG.A.P. may also aid regional producers in adapting to international regulations governing the export of agricultural and food products, enabling expansion into foreign markets while preserving the regional identity of products (GlobalG.A.P. 2024).

National food quality systems are crucial instruments for supporting and regulating agricultural production in Poland, especially in the context of the Common Agricultural Policy (CAP) for 2023–2027, as set down in the Strategic CAP Plan Act of 8 February 2023 (OJ 2023, item 412). These systems are recognised by the competent minister for rural development pursuant to Article 7(1) of the Act, which refers to the provisions of the Commission Delegated Regulation (EU) 2022/126 (OJ L 20 of 31 Jan. 2022, pp. 52–94). The recognition process is based on the fulfilment of certain key criteria.

First, products manufactured under these systems must possess specific characteristics resulting from particular cultivation and production methods, or demonstrate exceptional quality exceeding market standards. This criterion relates to public health, plant and animal welfare, and environmental protection. The systems must also be open to all producers, ensuring inclusivity and transparency. In addition, the product specifications applied under such systems must be verified by competent authorities to guarantee compliance with the required standards.

It should be emphasised that if a quality system no longer meets these criteria, the minister may withdraw its recognition pursuant to Article 7(3) of the Act. This mechanism ensures ongoing oversight of the quality of products produced under national quality systems and the maintenance of high standards that promote safety and transparency in the agricultural sector. In domestic practice, quality systems are intended to enhance consumer trust and facilitate producers' access to EU markets, provided that the products meet the relevant quality standards and are fully traceable at every stage of production (Krajowe systemy jakości żywności, 2023).

In Poland, various national systems supporting food quality exist, including Quality Tradition (Jakość Tradycja, 2020), Meet Good Food (Poznaj Dobrą Żywność 2022), and Integrated Production (Integrowana produkcja roślin, 2023), as well as food quality systems for meat products: QualityMeat Program (QMP) (QualityMeat Program 2024), PQS (PorkQuality System) (System Jakości Wieprzowiny 2024), and the System of Guaranteed Food Quality (QAFP) (System Gwarantowanej Jakości Żywności 2024), which is also open to

other products. These food quality systems were established to protect culinary heritage, reward the best and unique traditional and regional products, and provide producers with protection against unfair competition. These national food quality systems are open to any producer who undertakes to meet the requirements of a given quality system. Through these programmes, producers can distinguish their products from those of competitors, while consumers can be assured that the products they buy meet specific quality standards (Krajowe systemy jakości żywności 2023).

These systems tend to promote transparent production processes, higher food-production standards, and the protection of culinary heritage. As a result, consumers can be confident that the products on offer are not only tasty and healthy, but also aligned with ecological and social values. The systems also support farmers and producers by helping them gain market recognition and strengthen their competitiveness at home and abroad. They are closely connected to the European Network of Regional Culinary Heritage, which offers a different, yet undeniably important, dimension of protection.

3 The European Network of Regional Culinary Heritage

The European Network of Regional Culinary Heritage (ENRCH) brings together member regions from all over Europe. It aims to support the development and promotion of regional culinary-heritage networks by highlighting local, regional, and traditional foods. ENRCH members include restaurateurs and owners of other types of catering facilities, farms and agritourism farms selling their produce, wholesalers and retailers, food producers and processors, hotels and other accommodation providers offering food, as well as other types of organisations.

ENRCH was initiated in 1995 in northern Europe – more specifically, in the Swedish region of Scania and on the Danish island of Bornholm. Its membership has been expanded on a regular basis to include regions from all across Europe that work with a range of business partners, regional coordinators, and licensees (20-lecie Europejskiej Sieci Dziedzictwa Kulinarnego, 2015).

Despite a major organisational change within ENRCH, its original assumptions will be discussed below, as they continue to be officially promoted by the private owner who took over the Network, although its current realities differ from the initial aspirations. ENRCH was established to promote the traditional production of regional food products and to help customers and tourists access characteristic regional foods. Indirectly, it fosters regional and inter-regional development and collaboration. The Network brings together small

food producers and local restaurants and shops. Membership assures tourists and consumers that the products and meals on offer are prepared with quality products, according to traditional recipes, and sourced from a particular region. Its symbol and guarantee is a shared international logo, which all members are entitled to use.

ENRCH is organised into three levels: European Coordinator, Regions, and Enterprises. The European-level coordinator is responsible for the shared logo, issuing licences to regions, administering the official Culinary Heritage website, and coordinating joint European actions. Regional coordinators are also active within the Network and are tasked with recruiting new members in their regions. European coordinators assist, advise, and promote regions, entrepreneurs, and their products on the shared website. Once approved by the coordinators, regions are licensed to use the logo and become responsible for approving entities in their region and for local actions. A group of entrepreneurs from a given region, regional government, public institutions, companies, foundations, and the like can apply to become regional members of the Network. A coordinator appointed by the owner of a regional licence recruits enterprises and acts as their contact person¹. Enterprises from approved regions can apply for the membership in ENRCH. Approved entities become members of both the regional and European networks, becoming ambassadors for regional products. They are licensed to use the shared logo for display to consumers and are promoted on the official Culinary Heritage website.

An entity wishing to take part in ENRCH applies to the European Coordinator as a so-called Candidate Region, using an application form available on ENRCH's official website. A Candidate Region is initially supported by the European Coordinator and attends a compulsory two-day training arranged by the European Coordinator. Following the training, a Candidate Region applies for Approved Region status, with full rights as a member of the European Network.

Approved entities must be 'connected to the region', meaning that they should contribute to positive regional development and specialise in products made in the region, forming part of its cultural heritage or grown/ produced by entrepreneurs who maintain strong regional ties. Approved restaurants should offer dishes clearly linked to their region, that is, made locally. A dish may itself be part of the region's cultural heritage or enhance the attractiveness of regional food products.

¹ 'Enterprise' and 'entrepreneur' are used in a general sense, and include both farmers and farm managers.

Approved enterprises may use the ENRCH logo only in connection with products that meet the following criteria:

- a) raw materials are produced in the region; or
- b) raw materials may be imported if a product is expressly connected with the region and most of its value is derived from the region (Kieljan, 2011, s. 58 60).

ENRCH promotes products based on local raw materials, strongly linked to a region, and commonly integrated into its cultural heritage. As a result, it not only supports the preservation of traditional production methods, but also the rollout of contemporary initiatives based on local identities, reinforcing bonds among European regions and enhancing their tourist and economic attractiveness.

4 Organisational Changes to the European Network of Regional Culinary Heritage as a Weakening of Its Systemic Status

From 1 August 2021, the trademark rights to the European Network of Regional Culinary Heritage (ENRCH) were transferred to the Latvian non-governmental organisation Latgale Culinary Heritage Center, represented by Niclas Fjellström. The change raised a range of formal and legal doubts, especially as no prior notice of the planned change of ownership or the Network's reorganisation had been circulated. The intellectual property rights to the logo were transferred without notifying the regions, which learned of the change after the fact. The new owner introduced various modifications to the Network's operating regulations, including a shift of in scope from European to global, the introduction of new licence fees, and annual audits. The membership structure was changed on the website, and each member was required to enter into a new licence agreement, implying additional costs (Uchwała w sprawie wystąpienia Województwa Dolnośląskiego z Europejskiej Sieci Regionalnego Dziedzictwa Kulinarnego, 2022; Europejskie dziedzictwo kulinarne z Kujaw i Pomorza już nieaktualne 2023).

In these circumstances, the Food Commission of the Polish Regions Association addressed a letter to the Foreign Minister on 14 February 2022, expressing its concerns about the changes (Z posiedzenia Komisji ds. Żywności ZWRP 2022). On 30 May 2022, the Foreign Minister acknowledged that there were reasons to terminate the existing agreement and that, if the new rules were accepted, the competent minister would have to be asked to issue a new decision. The Minister noted that the changes to ENRCH's structure and

objectives, leading to the emergence of a new entity named Culinary Heritage, might contradict the priorities of Polish foreign policy and the regions' international cooperation. Opening Culinary Heritage to global markets beyond Europe may breach the previously established framework of regional cooperation and promotion of local businesses. As a consequence, the operation of the new structure may fall outside the scope of Poland's foreign policies, with the potential risk of working with regions and entities not included in this framework. On 24 September 2022, the Food Commission of the Polish Regions Association issued a recommendation for Polish regions to withdraw from ENRCH and discontinue the promotion of its logo, stressing that the changes in the Network no longer served the regions' initial interests and were contrary to their strategic objectives² (Uchwała w sprawie wystąpienia Województwa Dolnośląskiego z Europejskiej Sieci Regionalnego Dziedzictwa Kulinarne, 2022; Projekt uchwały w sprawie wystąpienia Województwa Opolskiego z Europejskiej Sieci Regionalnego Dziedzictwa Kulinarne (ESRDK); European Network of Regional Culinary Heritage [ENRCH], 2022).

Can the ENRCH, now 'Culinary Heritage', be said to have shifted from an instrument supporting national identity into a potential source of divisions? Entrepreneurs are now forced to remove their signs and change labelling and promotional materials. A belief has emerged that anyone can now 'buy' the logo, regardless of the quality of their food. As a result, work has begun on creating a new logo certifying high-quality regional food in order to fill the gap in the market. A working name is already in place – European Heritage: Tastes of the Regions – and every regional government will be able to join this network (Koniec ze znakiem Dziedzictwo Kulinarne Warmia Mazury Powiśle. Co to oznacza? 2023). It is to be based on the existing Polish programme 'Our Culinary Heritage – Tastes of the Regions', which promotes regional products and dishes that form part of local culinary traditions. It is designed to protect and popularise unique tastes characteristic of Poland's diverse regions, reflecting their history, culture, and tradition. The programme supports local producers, restaurateurs, and craftspeople who make food using traditional methods and local raw materials, while ensuring the authenticity and high quality of their products.

'Our Culinary Heritage – Tastes of the Regions' organises competitions, fairs, and other events promoting local specialities in order to raise public awareness of the diversity of Polish regional cuisine. Products and dishes that contribute to building regional identities, support local economies, and help preserve culinary cultural heritage are recognised and distinguished. Award-winning

2 It should be noted not all Polish entities have withdrawn from participation in ENRCH.

products are often certified for quality, which enhances their prestige and recognition in domestic and international markets (Informacje ogólne, Nasze Kulinarne Dziedzictwo, 2024).

Initiatives such as 'European Heritage: Tastes of the Regions' may not only foster local economies, but also help consumers better understand and appreciate the diversity of tastes across Europe. Such initiatives promote regional products among tourists, support local farming, and raise ecological and social awareness of food production. These tastes, though regional, gain international recognition and become part of the global market and culinary culture. Such initiatives may become effective elements in systems fostering culinary identity, filling the gap left by the changed European Network of Regional Culinary Heritage.

5 Conclusion

Food quality systems not only help safeguard national culinary heritage, but also reinforce national identity in the context of globalisation and the growing homogenisation of tastes. By protecting products inextricably linked to the history and tradition of a given nation, they foster regional development, preserve heritage, and support national culinary culture.

ENRCH played an important role in supporting regional identity by promoting local culinary traditions and food products. The network of regions from different European countries emphasised the values of regional dishes, recipes, and ingredients characteristic of the particular areas. By certifying local manufacturers, restaurants, and farms, ENRCH fostered the authenticity and quality of culinary heritage, helping to preserve tradition and pass it on to successive generations.

Promoting local products as part of ENRCH also helped strengthen regional identity by highlighting the uniqueness of local culture and culinary history. It also stimulated regional economies, since certified producers and restaurants gained recognition and attracted interest both at home and abroad, drawing tourists in search of authentic tastes. ENRCH not only protected and promoted local traditions, it also built bonds between regions collaborating within the Network, creating joint projects and shared experience. This cultural exchange enriched both producers and consumers while supporting sustainable regional development and the preservation of Europe's culinary heritage.

In the context of a private entrepreneur taking over the Network, however, the complex relationship between private management and the protection of cultural and culinary heritage must be considered from a legal perspective. The transformation of an originally social initiative into a commercial project

may undermine the idea of supporting the authenticity and quality of regional products. The privatisation of the Network has led to changes, with possible adverse effects on the initiative as a result of a departure from its original assumptions of protecting culinary traditions, supporting local producers, and assuring product quality. This raises questions about the legal protection of regional products and services, as well as the regulation of certification and quality marks such as logos. When a private entrepreneur takes control of such a network, standards may become looser, which can undermine safeguards for regional products based on relevant legal instruments such as geographical indications or quality certificates granted under domestic or European law.

The privatisation of ENRCH may lead to a loss of confidence among both consumers and local producers who previously relied on the Network's support as a means of promoting their traditional products. A shift towards a more commercial management of the Network may undermine the objectives of sustainable regional development and heritage protection that have been central to its operation. As a result, licence agreements, regulations, and quality standards may need to be revised, even though they should ideally remain unchanged regardless of who manages the initiative.

Private management may also give rise to challenges related to monitoring and auditing quality standards, since public institutions may have limited control over the entrepreneur's decisions. From a legal perspective, adequate regulations are needed to safeguard the interests of both local producers and consumers seeking genuine, high-quality products, and to prevent a decline in support for regional identity and product quality.

References

- Całka, Edyta. *Geograficzne oznaczenia pochodzenia. Studium z prawa wspólnotowego i prawa polskiego*. Warszawa: Wolters Kluwer Polska, 2008.
- Kieljan, Klaudia. *O systemach jakości żywności. Vademecum funkcjonowania produktów regionalnych i tradycyjnych*. Kraków: Centrum Doradztwa Rolniczego w Brwinowie, Oddział w Krakowie, 2011.
- Leśkiewicz, Katarzyna. "Prawna regulacja rolnictwa ekologicznego – próba oceny", *Przegląd Prawa Rolnego* no. 2(7) (2010): 121–139.
- Mrozek, Monika. 2023. *Unijne systemy jakości żywności*. Radom: Centrum Doradztwa Rolniczego w Brwinowie Oddział w Radomiu, 2023.
- Siebeneicher, George E. (ed.). *Podręcznik rolnictwa ekologicznego dla różnych kierunków i dziedzin*. Warszawa: PWN, 1997.
- Sikorska, Sylwia. *Systemy zapewniania jakości i bezpieczeństwa żywności*. Szepietowo: Podlaski Ośrodek Doradztwa Rolniczego, 2017.

The Domestic Perspective on the Legal Protection of Historic Monuments and Cultural Heritage



An Evaluation of the Polish Historic Monument Protection Law After Its Twenty Years in Force

Kamil Zeidler

Abstract After being in force for more than twenty years, the strengths and weaknesses of Poland's Historic Monument Protection Act of 23 July 2003 can be assessed with some confidence. This assessment relies not only on an analysis of the Act's normative contents ('law in books'), but above all on its practical dimension – the application of the historic monument protection law in Poland ('law in action'). This concerns several dimensions, which will be discussed in this paper. The evaluation ultimately gives rise to a set of proposals for necessary amendments to the law; moreover, it also points to the need to introduce far-reaching changes to the conservation administration system, as well as major adjustments to the process of applying the historic monument protection law itself.

Keywords cultural heritage protection law – historic monument protection law – the Historic Monument Protection Act – systems of historic monument protection

1 Introduction

Round anniversaries offer good opportunities for a range of retrospectives, since the passage of time allows us to verify how developments have played out in practice. In the legal sciences, particular attention is paid to how long a regulation has been in force and, more importantly, how effective it has been in achieving goals intended by the legislator. In this paper, I draw attention to major deficiencies of the 2003 Historic Monument Protection Act ('the 2003 Act' below), which has been in force in Poland for more than twenty years and which I have previously written and warned about (Zeidler 2023, 8–17). This period is sufficient to make a responsible assessment of the creation of, amendments to, and – above all – the application of the historic monument protection law. Owing to space constraints, the following is not an exhaustive analysis; rather, it offers an overall assessment that highlights a number of crucial issues. Wherever appropriate, I refer to publications that have already discussed certain matters in greater detail; this is the sole reason for referring to my earlier work.

In the first decade after the 2003 Act came into force, sufficient research material accumulated for a group of scholars to publish their conclusions in a substantial work (Zeidler 2014, 655). Continuing this line of theoretical reflection on the application of the law, it is now possible to ask how many of the postulates advanced at that time were addressed over the following ten years, and which still remain merely postulates. This is all the more important because the researchers who carried out those evaluations and expressed their views have been highly influential in shaping and applying cultural heritage protection law in Poland in recent years.

Beginning with some general observations, it must be noted that although the 2003 Act is referred to as ‘the constitution’ of the historic monument protection in Poland, there are many other sources for this complex branch of law, namely, cultural heritage protection law (Zeidler and Węgrzyk 2021, 11–27; Zeidler 2015a, 491–506). The application of the 2003 Act involves the exercise of discretionary powers by public administration, above all by a regional monument conservator, who issues specific individual decisions in applying the law. In legal-philosophical terms, this question forms part of a major contemporary debate, in Polish legal theory known – after Lech Morawski – as liberalism versus communitarianism (Zeidler 2009, 75–83; Zeidler 2016, 535–550). It concerns the tension between collective and individual interests, present across various spheres of public, economic, and political life, and manifested with particular intensity in historic monument protection law.

2 General

The 2003 Act was controversial both when it was passed and earlier, during the legislative process. Hopes for a new historic monument protection law clashed with critical opinions and assessments on several issues being addressed. It must be acknowledged that the Act went some of the way towards implementing the principles and ideas of a democratic rule of law. This is particularly evident in its allocating a broad range of powers to local authorities, for instance with respect to certain forms of historic monument protection. Two of the four protection forms currently in force were devolved to local communities: the establishment of culture parks, and protection through local land development plans. Of course, the fundamental form of protection – the register of historic monuments – was rightly reserved to the competence of regional monument conservators, while the designation of historic monuments was vested in the President of Poland. The remaining two forms, however, as well as so-called unnamed forms, such as local records of historic monuments or

praxeological actions such as planning and programmes, were intended to lie with local authorities. In this sense, the Act met postulates of decentralisation, de-concentration and subsidiarity as far as feasible in the realities of the early twenty-first century. Admittedly, proponents of these principles may have been dissatisfied to some extent; nonetheless, the focus of 'on-the-ground' historic monument protection clearly shifted. Moreover, tasks in historic monument protection were incorporated directly into the three local government acts as obligatory duties of local authorities at all three levels (Zeidler 2015b, 181–196). Unfortunately, the reverse tendency towards centralisation has also been visible in recent years, expressed in certain amendments to the 2023 Act.

Yet this shift in focus was directly linked to the property transformations in Poland after 1989. In particular, the former 'potentate' among holders of title to historic monuments – the State Treasury – transferred a large share of historic monument ownership to local authorities, just as most museums in Poland were transferred as part of the local government reform. If the issue of historic monument protection is viewed from the perspective of ownership rights, several groups of 'strategic owners' emerge: the state, local government, and, not least, private owners. The latter include not only private individuals in the strict sense, but also entrepreneurs and various social organisations, including churches and religious associations. This group cannot be ignored, since it often holds a significant number of major historic monuments, both in terms of quantity and value. The Catholic Church in Poland, for example, is responsible for a substantial part of the national cultural heritage, including numerous historic monuments. The best protection (in the everyday, not legal, sense of the word) is provided by an aware owner or holder.

3 Systemic and Analytical Approaches to the Application of the 2003 Historic Monument Protection Act

The discussion that follows adopts two approaches: a synthetic – or, in this case, systemic (Section 3) – and an analytical one, based on an analysis of the prevailing regulations with reference to their empirical dimension, that is, the application of the 2003 Historic Monument Protection Act (Section 4).

In scholarly language, as in everyday speech, certain notions become popular and fashionable at particular times. The concepts of 'system', 'systemic research', and a 'systemic approach' have gained such a popularity in recent years. A coherent system-building approach has been familiar to philosophers since antiquity, especially those with ambitions to construct 'systems' (Plato, Aristotle, St Augustine, St Thomas, Kant, Hegel, and many more), whereas the

methodology of systemic research developed in the second half of the twentieth century. The term gained traction from the 1970s onward and has recurred in a variety of contexts and with varying intensity. In the Polish theory of historic monument protection, systemic research and related methodological assumptions were initiated about a dozen years ago. Looking at the many different uses of 'system', however, one may conclude that while the concept is today popular, it also widely misused.

In its most basic sense, a system is: (1) (a least two) elements linked by mutual relationships and forming a whole that is qualitatively different from the sum of its parts; (2) a set of elements with a specific structure forming a whole whose features differ from those of its parts. In this connection, praxeological findings – especially the work of Tadeusz Kotarbiński, with its prompts for systemic research – are certainly valuable. In his conception, a system 'is a complex object with at least one part different than itself' (Pszczółowski 1978, 237). Among other things, complex, multi-level systems are emphasised: 'As systems are parts of other systems, relative notions like subsystem and superior system are employed, which means a system may be a subsystem or a superior system in another order' (Pszczółowski 1978, 237). As far as the system of historic monument protection is concerned, from a holistic perspective, historic monument protection law is a subsystem, with the legal system itself a superior system.

It is self-evident that the basic structure of the historic monument protection system consists of: (1) the law, (2) financing, and (3) raising social awareness of the need for protection (Zeidler 2007, 273–290). These are clearly the three indisputable pillars of the system. They also serve as an important guide, in a systemic approach, of where to look and which factors to address. The system nevertheless comprises many more detailed components. Key research questions can be organised around appropriate statements about present and past states of affairs and postulates for expected changes (Zeidler and Marcinkowska 2017, 278).

At present, systemic research conducted by a single scholar is out of the question. The theory of internal and external integration of the legal sciences is an important concept developed by Kazimierz Opalek and Jerzy Wróblewski thirty years ago. If, *per analogiam extensivam*, it is transposed to the context of the historic monument protection law, these areas prove too extensive not only for individual researchers but even for small teams. The notion of 'coordinated' research is therefore crucial: we all operate within a 'system', but only within the limits each of us is able to grasp and within the research boundaries each person sets for themselves. From the perspective of a systemic approach, however, this is not enough.

4 Problems and *de lege ferenda* Postulates with Regard to the Historic Monument Protection Act

The analytical approach must, of course be brief and enthymematic here. Nonetheless, some detailed comments on the 2003 Act itself, as well as on the forms and legal institutions of historic monument protection that it regulates, are necessary. As noted above, the overall assessment of the Act – and at least some of its subsequent amendments – is certainly positive. There have also been amendments that have not taken hold, however, as well as institutions that have not worked and regulations out of step with reality. I will therefore point out some weaknesses of the Polish historic monument protection law, while emphasising that many of its elements are commendable. The purpose of such criticism is not only to highlight weaknesses, lacunae, absurdities, incorrect application of law, or even inaction, but also to propose solutions. It is now time to identify the key problems of the 2003 Act.

First of all, the very definition of a historic monument raises multiple doubts as to its scope and referents. There are moveable and immoveable objects that are unquestionably historic monuments within the meaning of Article 3 of the Act. In practice, however, there are also many cases in which it is unclear whether a given object qualifies as a historic monument in the legal sense. This cannot be approached lightly or arbitrarily, as it entails interference with owners' rights in respect of objects treated as historic monuments. Given the diversity and individual character of historic monuments, it is of course difficult to formulate a definition that would encompass all objects deserving legal protection. Nonetheless, any definition requires attention to the branch of logic devoted to definition (Zajęcki 2012, 23–41). J. Stepnowska has recently advanced a highly interesting proposal to standardise definitional uncertainty by means of a so-called value-based approach, which helps to identify a shared core across notions used in cultural heritage protection law.

Second, the regulations concerning historic monuments, museum objects, and library and archive materials are not harmonised. Each of these categories is subject to separate statutory provisions, and contradictions arise where a single item falls under more than one of these designations. This is therefore a *sui generis* anti-systemic situation, in which different kinds of protected objects are subject to conflicting legal regimes.

Third, the register of historic monuments – perversely enough, perhaps the most historic of historic monuments – is the last public register that has not 'surrendered' to computerisation and, in many cases, it is outdated in comparison to the situation on the ground. Moreover, it is not standardised in terms of either temporal or territorial competence. Accordingly, administrative

decisions to enter historic monuments in the register vary over time and across territorial jurisdictions, which in turn leads to inequality before the law.

Fourth, entry in the List of Heritage Treasures is a highly controversial form of protection and has remained a dead letter since it was introduced nearly a decade ago. No moveable item has been classified as a Heritage Treasure. I was critical as early as the legislative stage, when the amendment was being drafted as a special law for individual works, since it would lose its *raison d'être* once a work was purchased for the Treasury. This form of protection should therefore either be abandoned entirely or substantially revised.

Fifth, the records of historic monuments, especially at the local level, are a reasonable and useful instrument that is nonetheless not used or is misused. In the former case, such records have either never been compiled or are not properly maintained, despite the statutory obligation; in the latter, the tool is abused to register items that are not historic monuments in the legal sense. The records of historic monuments in Gdynia provide an example, with fewer than 100 'registered historic monuments' and nearly 2,000 'recorded historic monuments'. It should be noted that Polish law does not distinguish between these categories of historic monuments. The situation is further complicated by the interference with property rights resulting from the recording of historic monuments, an issue also addressed by decisions of the Constitutional Court.

Sixth, the entirety of Chapter 2a of the Historic Monument Protection Act, concerning the national register of lost cultural assets, would merit a more extensive – though regrettably critical – commentary, which the limits of this article do not permit. Readers interested in this issue are therefore encouraged to consult the Chapter themselves.

The seventh point concerns not just the regulations themselves, but also the practice of their application, namely the management of historic monuments, research, work, and other activities involving historic monuments – in particular executive measures, that is, conservation recommendations and, above all, the permits issued by the regional monuments conservator. This area lies at the heart of the scope of historic monuments conservator's discretionary powers and of interference with ownership rights in the name of protecting the common good (Kowalska 2018, 387).

Eighth, the issue of archaeological historic monuments and their ownership, as well as searches for and accidental discoveries of historic monuments, remains contentious, as evidenced by one of the recent amendments to the 2003 Act.

Ninth, the question of exporting historic monuments abroad has always been emotionally fraught. The original regulation has already been amended – substantially and rightly – although the intended outcome has not been reached

in full. The practice of applying the law is problematic here: on the one hand, there is an evident lack of supervision over historic monuments carried across borders; on the other, permits – especially for permanent export – are granted under an excessively restrictive approach. As a result, the regulations become ineffective, a point that can be examined through economic analysis of law, in particular through conclusions drawn from the Laffer curve.

Tenth, the administrative system for the protection of historic monuments is inadequate for the volume of its statutory obligations and duties. In these circumstances, even with maximum effort and personal sacrifice by staff – including spending their own money, for example by using private cars without prospect of reimbursement – historic monuments cannot be protected effectively, as the competent authorities lack funding and resources. Far-reaching, perhaps even revolutionary, reforms are necessary. The still underdeveloped administration for the protection of local historic monuments remains a related issue.

Eleventh, crimes against historic monuments, as well as the issue of the so-called mixed regulations and their practical application by enforcement agencies, have been discussed and commented on extensively in the literature for years. The problem is compounded by the question of applying provisions governing offences against historic monuments.

The final, twelfth point concerns administrative fines, introduced, among other reasons, to prevent failures in the application of offence regulations. While they constitute a sound solution, they also require adjustments to both the contents of the regulations and, above all, to the practice of law application.

This list of ‘hot spots’ could be expanded to include further regulations and legal institutions requiring legislative adjustments or, more commonly, improvements in the practical application of the law. Alternatively, provisions that over the last twenty years have acquired the status of so-called dead laws should finally begin to be applied. To protect historic monuments, the law in force must be both observed and enforced (Zeidler 2010, 585–595). This in itself would deserve a separate study in legal sociology and politics, but the limits of this article do not permit this for obvious reasons. The enumeration offered here would also require broader and more detailed justifications. As mentioned at the outset, many such justifications are available in multiple publications on cultural heritage protection law. By way of summary, it may be added that the 2003 Historic Monument Protection Act has ‘over-regulated’ the field in such a way that the institutional realities of historic monument protection administration have not been adapted to the statutory requirements concerning competences and duties referred to above.

5 Conclusion

To conclude, let me stress that the protection of historic monuments is both important and increasingly valued in contemporary democratic states. As the maxim *ars longa, vitae brevis* suggests, we are merely fleeting custodians of the valuable works of former times – works that should be passed on to future generations in the best possible condition. We may believe that our property rights authorise the free disposal of things; yet when such things are historic monuments, that right should yield to the common interest, namely the protection of cultural heritage. In the event of such a conflict of values – essentially a hard case in law – interests and values must be weighed with particular care.

Obviously, in order to effectively preserve the most valuable ‘traces of the past’ for future generations, the state power, the will and authority of a regional monument conservator or even of the Minister for Culture and National Heritage, are not enough. What is needed is willing cooperation between public authorities and the actual users of historic monuments, namely, their owners or holders. This should be pursued as part of so-called discursive administration. This is another major task for both sides: public authorities and owners or holders of historic monuments. Without such dialogue, little can be achieved in the long run, as evidenced by numerous examples from the practice of applying cultural heritage protection law in general and the 2003 Act in particular.

The tone of this paper may seem pessimistic. Yet, mindful that kind and constructive criticism is one of the greatest acts of friendship, it is important to draw attention to matters requiring change, reorganisation, improvement, or updating – such as the computerisation and regular updating of the register of historic monuments. This is not to suggest that the analysis is only critical; rather the aim has been to focus on issues that should be anticipated, legislated for, and subsequently addressed in the practical application of historic monument protection law.

References

- Kowalska, Ewelina. *Własność zabytku a dyskrejonalna władza konserwatorska*. Gdańsk: Wydawnictwo Uniwersytetu Gdańskiego, 2018.
- Pszczółowski, Tadeusz. *Mała encyklopedia prakseologii i teorii organizacji*. Wrocław–Warszawa–Kraków: Zakład Narodowy im. Ossolińskich, 1978.
- Zajęcki, Maurycy. “Definiowanie pojęć podstawowych prawa kultury w kontekście zasad wykładni prawa polskiego”, in *Kultura w praktyce. Zagadnienia prawne*,

- ed. by Alicja Jagielska-Burduk and Wojciech Szafrński. Poznań: Wydawnictwo Poznańskiego Towarzystwa Przyjaciół Nauki, 2012: 23–41.
- Zeidler, Kamil. *Prawo ochrony dziedzictwa kultury*. Warszawa: Wolters Kluwer, 2007.
- Zeidler, Kamil. "Interwencjonizm państwowy w świetle sporu pomiędzy liberalizmem a komunitaryzmem", *Gdańskie Studia Prawnicze* vol. XXII (2009): 75–83.
- Zeidler, Kamil. "O dobre prawo dla zabytków – rozważania na gruncie ustawy z 2003 r. o ochronie zabytków i opiece nad zabytkami", *Gdańskie Studia Prawnicze* vol. XXIV (2010): 585–595.
- Zeidler, Kamil (ed.). *Prawo ochrony zabytków*. Warszawa–Gdańsk: Wolters Kluwer – Wydawnictwo Uniwersytetu Gdańskiego, 2014.
- Zeidler, Kamil. "Przestrzenie badawcze prawa ochrony dziedzictwa kultury", *Gdańskie Studia Prawnicze* vol. XXXIII (2015a): 491–506.
- Zeidler, Kamil. "Gmina, powiat, samorząd województwa jako składniki systemu ochrony dziedzictwa kultury", *Gdańskie Studia Prawnicze* vol. XXXIV (2015b): 181–196.
- Zeidler, Kamil. "Ograniczenia prawa własności w świetle sporu liberalizmu z komunitaryzmem", *Gdańskie Studia Prawnicze* vol. XXXVI (2016): 535–550.
- Zeidler, Kamil. "Tworzenie i stosowanie prawa ochrony zabytków. Refleksje z okazji dwudziestolecia Ustawy o ochronie zabytków i opiece nad zabytkami", in *20 lat ustawy o ochronie zabytków i opiece nad zabytkami*, ed. by Jadwiga Marcinek. Warszawa: Narodowy Instytut Dziedzictwa, 2023: 8–17.
- Zeidler, Kamil and Marcinkowska, Magdalena (ed.). *Dekret Rady Regencyjnej z 1918 r. o opiece nad zabytkami sztuki i kultury z komentarzem, czyli eseje o prawie ochrony dziedzictwa kultury*. Gdańsk: Wydawnictwo Uniwersytetu Gdańskiego, 2017.
- Zeidler, Kamil and Węgrzak, Małgorzata. "Cultural heritage law as a complex branch of law", *Gdańskie Studia Prawnicze* no. 2(50) (2021): 11–27.

The Duties and Competences of Local Authorities in the Protection of Historic Real Estate in Poland

Helena Kisilowska

Abstract Appropriate protection of, and care for, historic real estate requires greater competence on the part of local authorities. Clear legal instruments are needed to define the object, principles, objectives, and methods of such protection, as well as the rights and obligations of both users and local administration. The discussion will address, *inter alia*, the legal aspects of protection; national and regional protection programmes; the integration of real estate protection with land-use planning and local records of historic monuments (in light of the Constitutional Court's judgment of 11 May 2023, file ref. P 12/18); and the use of historic real estate, including assistance for owners and users with maintenance and repairs. The need to decentralise competences will be emphasised, in particular by strengthening those of regional and local (municipal) authorities.

Keywords protection of historic real estate – duties of local authorities – local records of historic monuments – care for historic monuments

1 Introduction

In today's globalised world, the need to protect cultural heritage – understood as the protection of public interest and a fundamental duty of the democratic state and its administration – is gaining particular significance.

Participation in culture and contact with tangible cultural heritage have considerable impact on the emotional and intellectual development of societies, especially on how individuals understand their place in reality and time, as well as their identification with a country, region, or place of birth or residence. The protection of historic monuments also plays an important role in building interpersonal and intergenerational bonds, since, as S. Fundowicz rightly observes: 'Without a community, there is no human being. One does not need a society, but a community – people linked by unique ties' (Fundowicz 2021, 17). Article 5 of the Polish Constitution sets out the general principle guiding the actions of citizens and state authorities: 'The Republic of Poland shall [...] safeguard the national heritage', while Article 6 specifies the state's obligations to provide conditions for the dissemination of, and equal access to,

cultural property as a source of the Polish nation's identity. In the light of the Constitutional Court's jurisprudence, the protection of historic monuments constitutes a matter of public interest (K 20/07 OTK-A 2007, No. 9, item 102).

Cultural heritage encompasses a broad range of tangible and intangible assets. Historic real estate occupies a prominent place among them, as an important testament to the past and an integral part of contemporary culture.

If historic real estate is to survive as evidence of the continuity of human existence, both effective instruments and robust legal safeguards for its protection are necessary. This places a difficult obligation on public administration, including local authorities, to balance public and individual interests.

It is assumed here that the socially necessary protection of historic real estate requires not only action by the state and its central administration, but also active involvement of local authorities, as those closest to the citizenry. Legal regulations should facilitate such involvement. A democratic state should base its administration on principles of public governance, treating citizens as an integral group of participants in administration and decision-making.

A decentralised approach to the protection of historic monuments also has an important axiological dimension. Democracy – a system that recognises the will of the majority as the source of power – is a mode of governance and compromises-seeking that is particularly well suited to resolving difficult questions. In this context, education is essential to ensure that communities understand the importance and necessity of protecting historic real estate, including at the local level.

2 The Duties of Local Authorities in the System of Legal Protection of Historic Real Estate

The Act on the Protection and Care of Historic Monuments of 23 July 2003 (OJ 2022, item 840 as amended) is the fundamental legal act in this regard in Poland; it has been amended a number of times. Pursuant to Article 3(2), an immoveable historic monument is real estate or its part, or an ensemble of properties, created by man or connected with human activity, which constitutes a testimonial of a past era or event, and whose preservation is in public interest due to its historic, artistic, or scientific value. Public interest is highlighted here, to be adequately protected by administrative law. The Act determines the object, scope, and forms of the protection and care of historic monuments, the rules for creating national programmes of protection and care, the funding rules for restoration, maintenance, and construction work on historic

monuments, as well as the organisation of historic monument protection authorities (Kisilowska 2018, 43).

In line with the Act, the protection of historic monuments involves, in particular, public administration actions intended to:

- provide legal, organisational, and financial conditions for the continued preservation, administration, and maintenance of historic monuments;
- prevent hazards that may impair the value of historic monuments;
- prevent the destruction or inappropriate use of historic monuments;
- counteract the theft, loss, or illegal export of historic monuments;
- monitor the condition and intended use of historic monuments;
- address protection duties in land-use planning and development, and in environment management.

In everyday language, a historic monument is evidence of the past and of human activity that identifies a historical and cultural society (Pruszyński 2001, 74). The Act lists examples of objects potentially subject to protection, divided into immovable and moveable historic monuments. Protection and care extend, regardless of their condition, to immovable historic monuments, including in particular:

- cultural landscapes;
- urban or rural arrangements and building ensembles;
- works of architecture and construction;
- works of defensive construction;
- engineering facilities, especially mines, steelworks, power plants, and other industrial factories;
- cemeteries;
- parks, gardens, and other designed forms of greenery;
- sites commemorating historic events or the activities of outstanding personalities or institutions.

Historical or traditional names of buildings, squares, streets, or settlement units may also be protected. Real estate is a particular type of historic monument, although it should be emphasised that the Acts largely adopts regulations common to all types of historic monuments.

As a key form of historic monument protection, the Act provides for their registration and supervision by regional monument conservators, that is, government administration authorities. In consultation with the conservators, a *staroste* (chair of the district executive board) may place notices on registered immovable historic monuments stating that they are protected.

At the request of the competent minister for culture and national heritage protection, the President of Poland may designate an immovable registered

monument or a cultural park of particular cultural value as a historic monument and determine its borders.

The List of Heritage Treasures, introduced to the Act in 2015, is a relatively new form of historic monument protection, covering moveable historic monuments of particular value to cultural heritage (Zalasińska and Brudnicki 2021, 6).

A local council, after consulting with a regional monument conservator, may resolve to establish a culture park in order to protect a cultural landscape or preserve distinct landscapes featuring immovable historic monuments characteristic of local building and settlement traditions. Bans and restrictions may be introduced for all or part of a cultural park, applicable to: construction work and industrial agricultural animal breeding; commercial or service activities; changes to the use of immovable historic monuments; notice boards, signs, advertisements, and other signage unrelated to the protection of the cultural park (except for road signs and signs connected with public order and safety keeping); and the storage or warehousing of waste.

The protection and care of historic monuments are taken into account when drafting the following: the national concept for land development; regional development strategies; regional land development plans; plans for the development of territorial waters and business parks; county land development analyses and studies; local development strategies; studies of the conditions and directions of local land development; decisions determining the location of public-purpose investments; zoning decisions; road investment permits; decisions determining the location of railroad investments; and public airport permits.

The historic monument protection authorities are: the competent minister for culture and national heritage protection, represented by the General Monument Conservator, and the voivods, represented by regional monument conservators acting in their name.

The Historic Monument Protection Council, an advisory body that issues opinions on policy regarding historic monument care and protection, is affiliated with the minister.

The Act also provides that, at the request of a regional monument conservator, a *staroste* may appoint social historic monument guardians. Their duties may be performed by legal entities or organisations without legal personality, such as partnerships.

A 2022 audit by the Supreme Chamber of Control found that the Minister for Culture and National Heritage and the General Historic Monument Conservator, as well as the audited regional conservators, had failed to discharge their duties properly. Despite increased state budget outlays, the proportion of applications approved for funding work on historic monuments (as

a share of those submitted by a range of applicants) decreased. Central budget allocations were only weakly supplemented by the National Fund for Historic Monument Protection, whose annual contributions amounted to only five per cent of the forecast level. The auditors considered that this may lead to the irreversible degradation of historic objects (Najwyższa Izba Kontroli, 2024).

The need to situate local authorities within the system of historic monument care and protection has not been duly appreciated by the Polish legislator. General regulations are found in local government legislation and in the Act on the Protection and Care of Historic Monuments. The responsibilities of a local community listed in Article 7(1)(g) of the Local Government Act of 8 March 1990 (OJ 2024, item 609) comprise cultural matters, including the protection and care of historic monuments. County and regional governments are assigned responsibilities that extend beyond the local level (OJ 2024, item 107; OJ 2024, item 566). These are to be carried out, first and foremost, through the formalised forms of protection provided for in the Act on the Protection and Care of Historic Monuments and the Land Planning and Development Act of 27 March 2003 (OJ 2023, item 977). These include: local registers of historic monuments, land development policy, the establishment of culture parks, and preparation of programmes for historic monument care and protection.

The duties and obligations of local authorities concerning the protection of historic monuments in situations of national threat and during military conflicts are set out in the Fatherland Defence Act of 11 March 2022 (OJ 2024, item 248). The system and method of historic monument protection in cases of military conflict and other special hazards are set down in local historic monument protection plans, prepared by local executives (mayors, city presidents) in consultation with regional monument conservators and the competent civic defence authorities at county level. These plans may be classified under the Protection of Classified Information Act. They should be updated annually.

3 Local Records of Historic Monuments

Maintaining local registers of historic monuments is one of the major duties of local authorities, as it provides the foundation for protective measures at local level, including provisions in local land development plans and programmes of historic monument care. Local registers are kept by local executives (mayors, city presidents) as sets of address cards for immovable historic monuments located in the area. At present, local registers include far more entries than the state register of historic monuments. This entails not only significantly greater duties and restrictions, but also rapidly rising costs.

A comprehensive 2019 study of historic monument care and protection by local authorities showed that 1,875 of Poland's 2,477 local communities maintained local registers comprising 573,941 historic monuments, including 409,773 immovable monuments and 5,921 urban and rural layouts (Ochrona, 2020, 18). These figures are now higher. The National Programme of Historic Monument Care and Protection for the Years 2023–2026 (*Krajowy program ochrony zabytków i opieki nad zabytkami na lata 2023–2026*), adopted by the Council of Ministers on 1 December 2023, states that the state register of historic monuments comprises 80,000 immovable items, whereas the registers maintained by local authorities contained 600,000 items at the time of the programme. Such an onerous public duty requires adequate procedures and financial support.

The regulations conferring on local authorities the competence to maintain local registers of historic monuments are imprecise and permit practices that may be harmful to real estate owners. This was reflected in the Constitutional Court's judgment of 11 May 2023 (ref. P12/18), which held that Article 22(5)(3) of the Act on the Protection and Care of Historic Monuments of 23 July 2003, insofar as it restricts ownership rights in real estate by allowing properties to be listed as immovable historic monuments in local registers without guaranteeing owners legal protection against such a restriction, is incompatible with Article 64(1) and (2) in conjunction with Article 31(3) of the Polish Constitution.

The Constitutional Court's decision triggered a marked change in administrative court decisions. In its judgment of 19 December 2023 (II OSK 1771/22), the Supreme Administrative Court emphasised that Article 22(5)(3) must be interpreted in light of the Constitutional Court's judgment of 11 May 2023; a limited judgment removes an unconstitutional interpretation from the legal system. Courts must take this into account and apply the Constitutional Court's ruling accordingly.

The approach of the Regional Administrative Courts has also changed. The courts now take the view that the entry of a historic monument in local registers, as well as the inclusion, deletion, or updating of an address card, must be carried out while ensuring that owners or holders of historic monuments are afforded at least minimum procedural guarantees enabling them to contest effectively the evidence relied upon by the registering authority. Owners must have a genuine opportunity to address such evidence and to submit their own motions for evidence challenging the authorities' conclusions (II SA/LU 1032/23; VI SA/Wa 2018/18).

Despite the Constitutional Court's judgment, there are still no grounds for direct application of administrative judiciary procedures to the entry of a historic monument in local registers, even though any restrictions on rights and

freedoms should be laid down by statute and judicial protection should be guaranteed. As matters stand, the Act on the Protection and Care of Historic Monuments should be amended to include provisions governing the procedure for entry in local registers of historic monuments. This view is shared by A. Jakubowski, who emphasises that any new regulation must assure procedural guarantees for the owners and holders of historic monuments being entered in the register, including their right to active participation in the proceedings and judicial review of the register (Jakubowski 2023, 44).

4 Culture Parks

A culture park is a form of large-area protection that establishes a special legal regime for the use of a specified area. It is created to protect a cultural landscape and preserve distinctive landscapes featuring immovable historic monuments characteristic of local building and settlement traditions.

Establishment of a culture park requires a protection plan to be drafted and approved by a local council. The legislator has not granted such plans the status of local law, which considerably limits their effectiveness (Zalasińska 2020, 54). Local land development plans must be prepared for areas in which culture parks are formed. These constitute acts of local law, which affords the institution a degree of legal protection. A local council's resolution to establish a culture park should determine its borders, methods of protection, and the applicable prohibitions and restrictions. Court law emphasises that these may only be the prohibitions and restrictions enumerated in the Act on the Protection and Care of Historic Monuments (II OSK 1487/07; III SA/Kr 569/07).

A culture park, valued for its distinctive integrity, serves to protect historic real estate characteristic of a local tradition. Alongside historic, artistic, and scientific values, tradition as a medium of socio-cultural values should be an additional element of the protection (Małkowska 2017, 752). The Act allows residents to submit motions concerning draft resolutions to form a culture park. The local council must announce the commencement of work on establishing a culture park in the local press and through customary notices, specifying the form, place, and deadline for submitting motions.

In addition to conflicts between the public interest and the private interests of owners and users, a common issue associated with the creation of culture parks is the competition between this form of protection and legally provided forms of nature protection. Culturally valuable areas may also have natural value, and their protection, for example as nature reserves, may entail restrictions that run counter to the needs of historic monument protection (Ginter,

Michalak 2016, 143). This confronts local communities with the difficult task of harmonising, in line with sustainable development, the requirements of historic monument and nature protection, as well as local economic development (Zalasińska 2010, 123).

5 Local Government and Conflicts Over the Protection of Historic Real Estate: Public and Private Interests

The protection of historic real estate requires compromise between preserving intact cultural heritage as a social and national value and adapting a particular historic monument to contemporary requirements. Contrary to some popular opinions, an unused historic monument is often more exposed to damage, or even destruction, than one that is in reasonable and informed use. The Act provides that the owner or holder of historic real estate is obliged to secure and maintain the monument and its surroundings in the best possible condition, to use it in a manner that ensures the continued conservation of its value, and to undertake necessary conservation, restoration, and construction work. These obligations are often onerous, including financially.

The owner or user of historic real estate is required to obtain a permit from the regional monument conservator to carry out operations such as: conservation and construction work; archaeological research; the transfer of an immoveable historic monument; a change to the monument's intended or actual use; and the installation of technical equipment, advertisements, boards, or signs on the monument. In order to enable compliance with the statutory requirements, the regional monument conservator must make available to the user any documentation relating to the historic monument and allow the making of any necessary copies of that documentation (OJ 2022, item 840 as amended, Article 25(2)).

Immoveable historic monuments should also be accessible to the public and used for research and educational purposes.

The user of an immoveable historic monument is entitled to rights which are, regrettably, disproportionate to the obligations. These include real exemptions from estate tax, reduced rates of perpetual usufruct fees, and eligibility for earmarked state-budget subsidies for conservation, restoration, and construction work (OJ 2022, item 840 as amended, Article 73).

Subsidies for conservation, restoration, and construction work on a historic monument entered in the central register or in local registers of historic monuments may be awarded by a local or county council, or by a regional assembly, in accordance with their resolutions. The subsidy may covers up to one

hundred per cent of the necessary expenditure (OJ 2022, item 840 as amended, Article 81). The rules governing the subsidy must be set out in a local council resolution, which is an act of local law (I SA/Łd/502/23). Such subsidies, however, require adequate funds, which is a serious issue, especially in smaller and poorer communities.

Local and municipal authorities should have a far greater say in allocating funds for the maintenance and conservation of historic real estate within their areas.

J. Ślugocki rightly notes that a consensus, or at least a degree of harmony, in the realisation of public and private interests would be ideal, citing as an example support for the financial burdens of historic monument conservation through public funding in the form of subsidies, programmes, or reliefs (Ślugocki 2014, 178). It is important that such resources are allocated fairly and transparently. The role of local authorities and non-governmental organisations is also essential in this respect.

To encourage the transfer of historic real estate to individual buyers who will be able to maintain such monuments in good condition, the legislator has provided for special price reductions when historic real estate is sold by the Treasury and by local, county, and regional authorities. Article 68(3) of the Real Estate Administration Act of 21 August 1997 provides that historic real estate prices determined by property valuers are to be reduced by fifty per cent. The competent authority, in consultation with the competent regional administrator or assembly, local, or county council, may increase or decrease the reduction (OJ 2023, item 344 as amended). Such reductions are granted on a case-by-case basis.

6 Conclusion

The protection of historic real estate is a multidimensional issue that requires a new perspective and appropriate classification. Anxious to preserve cultural heritage, the legislator equips public administration authorities with certain formalised instruments of protection. This aligns with the assumption that substantive administrative law should protect values, or assets that embody values, which are important to society (Duniewska, 2017, 127). Not everything can be protected without limit. It should also be borne in mind, however, that a historic monument is an asset that is easily lost.

Sound prioritisation and protection of historic real estate must allow for involvement of local authorities, particularly local and municipal government, in decision-making and spending to a far greater extent than at present. If local

communities are to be burdened with the obligations of registering and protecting historic monuments, their oversight – especially over the distribution of protection funding – must be strengthened. For local communities to be able to discharge their duties properly, including those related to the protection of historic monuments, not only good law but also a different system of local government financing is required. In Poland, this necessitates reform.

Given the prospect of drawing on another tranche of European funding in the coming years, enhanced participation by local authorities and residents in preparing effective plans for historic monument care and protection becomes feasible, including reasonable support for owners and users in the care and conservation of historic real estate.

The concept of historic monuments as elements of a living cultural heritage is most apparent at the level of local and municipal communities. Good legislation can provide conditions for the use of historic real estate without detriment to fundamental values. For the process to be effective, and for it to be supervised by conservation services, it must be acceptable to local communities. This is also an important educational aspect of local authorities' work.

References

- Duniewska, Zofia. "Zakres regulacji prawa administracyjnego materialnego – wyznaczenie pojęcia instytucji tego prawa", in *Prawo administracyjne materialne*, vol. 7, *System prawa administracyjnego*, ed. by Roman Hauser, Zygmunt Niewiadomski, and Andrzej Wróbel. vol. 7 (2017): 51–183. Warszawa: Wydawnictwo C.H. Beck.
- Fundowicz, Sławomir. "Zasada decentralizacji administracji publicznej w świetle personalistycznej koncepcji administracji publicznej i prawa administracyjnego", *Roczniki Nauk Prawnych* no. 3, vol. 31 (2021): 7–19.
- Ginter, Artur and Michalak, Anna. *Ustawa o ochronie zabytków i opiece nad zabytkami. Komentarz*. Warszawa: Wydawnictwo Wolters Kluwer, 2016.
- Jakubowski, Aleksander. "Co dalej z gminną ewidencją zabytków? Stan po wyroku Trybunału Konstytucyjnego z 11 maja 2023 r. (sygn. P12/18)", *Ochrona Zabytków*, no. 2 (2023): 35–47.
- Kisiłowska, Helena. "Prawo dziedzictwa kulturowego w Polsce", in *Złożoność materialnego prawa administracyjnego*, ed. by Joanna Smarż. Radom: Wydawnictwo Uniwersytetu Radomskiego im. Kazimierza Pułaskiego, 2018: 43–55.
- Krajowy program ochrony zabytków i opieki nad zabytkami na lata 2023–2026*. <https://www.gov.pl/web/kultura/krajowy-program-ochrony-zabytkow-i-opieki-nad>

- zabytkami-na-lata-2023-2026-przyjety-przez-rade-ministrow [accessed 20 June 2024]
- Małkowska, Anna. "Park kulturowy jako forma ochrony wartości", in *Aksjologia prawa administracyjnego*, ed. by Jan Zimmermann, vol. II (2017): 749–762. Warszawa: Wydawnictwo Wolters Kluwer.
- Najwyższa Izba Kontroli, 2024. *NIK o systemie ochrony zabytków w Polsce*, <https://www.nik.gov.pl/najnowsze-informacje-o-wynikach-kontroli/system-ochrony-zabytkow.html> [accessed 31 May 2024].
- Ochrona zabytków i opieka nad zabytkami w samorządzie gminnym. Raport z realizacji badania 2020*. Warszawa: GUS, Departament Badań Społecznych US w Krakowie, 2020: 1–60.
- Pruszyński, Jan, P. *Dziedzictwo kultury Polski. Jego straty i ochrona prawna*. Kraków: Kantor Wydawniczy Zakamycze, 2001.
- Sługocki, Janusz. *Opieka nad zabytkiem nieruchomym. Problemy administracyjno-prawne*. Warszawa: Wydawnictwo Wolters Kluwer, 2014.
- Zalasińska, Katarzyna. *Prawna ochrona zabytków nieruchomych w Polsce*. Warszawa: Wydawnictwo Wolters Kluwer, 2010.
- Zalasińska, Katarzyna. *Ustawa o ochronie zabytków i opiece nad zabytkami. Komentarz*, 1st ed. Warszawa: Wydawnictwo C.H. Beck, 2020.
- Zalasińska, Katarzyna and Brudnicki, Jacek. 2021. "Rejestr zabytków – postępowanie w przedmiocie wpisu do rejestru i skutki objęcia ochroną prawną", in *Ochrona zabytków – aspekty materialnoprawne i procesowe. Studium Konserwatorskie*, ed. by Katarzyna Zalasińska. Warszawa: Wydawnictwo KSAP, 2021: 6–25.

Preventive Building Code Regulations Concerning the Protection of Historic Real Estate

Joanna Smarż

Abstract Historic real estate is important evidence of the culture, traditions, and history of past generations. Its preservation and protection are crucial to maintaining national identity; accordingly, it is a major concern addressed by the legislator in the prevailing regulations. The provisions of Poland's Building Code play a special role in the construction process, supporting and supplementing the regulations of the Act on the Protection and Care of Historic Monuments.

These provisions of the Building Code are preventive, in that they are intended to prevent actions that could adversely affect historic real estate. The Code therefore imposes more severe restrictions on construction processes involving the protection of historic monuments than the general rules governing the erection and maintenance of buildings.

Keywords protection of historic real estate – Building Code – common good – prevention

1 Introduction

Historic real estate, a common good, is subject to special protection in order to preserve it in an appropriate condition for future generations. Effective protection, commonly associated with resolving conflicts between individual and public interests, is the state's duty. Such conflicts may arise in the course of the construction process, for example under Poland's Building Code of 7 July 1994¹. The process is also shaped by a range of other regulations, including the Act on the Protection and Care of Historic Monuments of 23 July 2003².

The Building Code regulations are preventive. They are intended to prevent actions that could adversely affect historic items and to minimise negative impacts on their condition. These provisions, to be analysed here, apply to every stage of the construction process.

1 OJ 2024, item 725 as amended.

2 OJ 2022, item 840 as amended; also 'the Act' below.

This paper will identify certain stricter requirements relating to the protection of historic monuments under the Building Code and demonstrate their preventive character. The dogmatic-legal method will be employed.

2 The Significance of Historic Real Estate to the Public

Historic real estate is a major form of evidence of history, and its preservation and protection are crucial to upholding national and cultural identity. Systematic and effective protection is therefore necessary, with particular attention to historic real estate. It is important to ensure adequate protection in the construction process, which is governed, *inter alia*, by the provisions of the Building Code.

The undertaking to pass on to future generations whatever is valuable among the achievements of our society is implied by the preamble to the Polish Constitution³ and underpins the need for exceptional protection. Accordingly, the protection of outstanding historic values constitutes an important public interest of constitutional rank (Smarż 2014, 327). The preamble is elaborated in successive provisions of constitutional law, which state that the Republic of Poland shall safeguard its national heritage (Article 5) and ensure conditions for the dissemination of, and equal access to, cultural assets – a source of the Polish nation's identity, survival, and development (Article 6) (Zeidler 2017, 17). The undertaking to protect cultural assets is reinforced by the right and freedom to take advantage of those assets (Article 73 of the Polish Constitution).

In this way, the Polish Constitution obliges all public administration authorities to protect the national heritage, including historic monuments (Smarż 2023, 181). This obligation is specified further in the Act on the Protection and Care of Historic Monuments and, with regard to construction work on historic objects, in the Building Code. Historic real estate constitutes a major part of tangible cultural heritage. It is a monument to past eras, a source of national identity, and a record of human history (Sienkiewicz 2016, 301). It embodies unique socio-cultural, scientific, and educational values and, in most case, also financial and economic importance (Zajadło and Zeidler 2010, 376).

In view of the above, historic real estate is subject to a special protection by the state. This is manifested, *inter alia*, in the particular legal conditions governing construction work on historic objects and in the laying down of

3 The Constitution of the Republic of Poland dated 2 April 1997, OJ 1997, No. 78, item 482 as amended.

special requirements regarding the qualifications of those supervising such work (Smarż 2019, 9–11).

3 Defining Historic Real Estate

Historic real estate is defined in the Act on the Protection and Care of Historic Monuments. Protection and care apply to real property, parts of it, or ensembles that are man-made and connected with human activity, and that constitute testimonies to past eras or events whose preservation is in the public interest owing to their historic, artistic, or scientific value (Article 3(2) in conjunction with Article 3(1) of the Act).

This definition is general and requires assessment on a case-by-case basis. Above all, the authority assesses historic, artistic, or scientific value⁴. The introduction of a general definition of historic real estate is commendable, as it allows the competent authorities to extend protection to anything made by man and connected with human activity that the public consider worth preserving for future generations at a given time (Koczara and Pasik 2014, 8). This does not mean, however, that authorities have unfettered discretion to extend protection to any item. Treating a property as a monument requires appropriate reasons, the identification of circumstances indicating its historic value and, where doubts arise, relevant expert opinions. Nonetheless, the degree of administrative discretion remains significant (Smarż 2018, 149–169).

The definition of historic real estate becomes more specific in Article 6(1)(1) of the Act, which lists examples of historic monuments, although it does not present them expressly as an interpretative guide for the competent authority (Golat 2009, 12). In particular, the legislator provides that protection and care extend to historic real estate, regardless of its condition, including: cultural landscapes; urban and rural layouts and building ensembles; works of architecture and construction; works of defensive construction; engineering structures, in particular, mines, steelworks, power plants, and other industrial facilities; cemeteries; parks, gardens, and other forms of designed greenery; and sites commemorating historic events or the activities of eminent individuals or institutions.

In order to determine whether something constitutes historic real estate, the public interest must therefore be evaluated and weighed, since the mere fact of

4 The Supreme Administrative Court judgment of 24 January 2017 II OSK 1052/15, *Legalis* No. 1578479.

when something was created is insufficient (Zalasińska and Zeidler 2012, 243), all the more so when this is not specified.

Importantly, an object's condition has no bearing on the decision to subject historic real estate to statutory protection. Its technical 'death' is immaterial if the object continues to fulfil the conditions laid down in Article 3(1) and (2) of the Act.

It should also be noted a historic monument may be removed if it has been destroyed to an extent that results in the loss of its historic, artistic, or scientific value (Article 13(1) of the Act). The existence of historic value depends on the preservation of the substance that constitutes its core. The destruction of parts of a historic monument that does not affect its historic essence may diminish its historic value, but cannot justify removing a monument from the register (Zalasińska 2010, 62). This condition of removing a monument from the register. This condition for deregistration, on the other hand, may become a reason not to enter a monument in the register of objects that are damaged or in bad repair. Protection authorities considering whether to enter in the register an item that has been destroyed should assess whether its state of repair is so poor that it no longer presents any historic, artistic, or scientific value⁵. In this light, the register should not be limited to listing only those items and objects that are the most precious and require special protection regimes.

Any analysis of the concept 'historic real estate' must also refer to the notion of 'products of culture' (or 'cultural asset'), used by the legislator, *inter alia*, in Article 6(1) of the Polish Constitution, yet without an explanation. P. Dobosz rightly notes that the 'historic monument' has a narrower scope than the 'cultural asset', which encompasses not only historic monuments in the strict sense, but also other evidence of cultural development (Dobosz 1997, 78). The current legal order lacks a statutory definition of the 'cultural asset', although the term is quite widely used in the doctrine. The notion was introduced in Article 2 of the now-repealed Protection of Cultural Assets Act of 15 February 1962⁶. A cultural asset was there defined as any moveable or immovable object, past or present, significant to cultural heritage and development owing to its historic, scientific, or artistic value. B. Banaszak argues that the concept of cultural asset refers, in its ordinary sense, to objects, means, and values that constitute the tangible and spiritual achievements of the Polish nation (Banaszak 2012, 76–77). The 'cultural asset' should therefore be regarded as being of substantial significance for the cultural, historic, and spiritual heritage and identity of

5 The Regional Administrative Court in Warsaw judgment of 26 January 2017, VII SA/Wa 29/16, Legalis No. 1722137.

6 OJ 1999, No. 98, item 1150 as amended.

a community or nation, encompassing both tangible and intangible cultural heritage.

The definition of historic real estate refers to the public interest by providing that its preservation is in the public interest owing to its historic, artistic, or scientific value (Article 3(1) and (2) of the Act) (Sienkiewicz 2017, 737). Its safeguarding is therefore a public duty arising from the principle that historic monuments are common assets (Zeidler 2011, 99). Their protection is in the interest of society as a whole, as evidence of our civilisation and culture (Pruszyński 2001, 47).

4 Provisions of the Building Code that Affect the Protection of Historic Real Estate

The Building Code is important for construction work on a historic object, as it lays down special requirements in this respect. Its provisions are intended to establish formal requirements so that the construction process is as safe as possible and ensures that the historic object is preserved in an appropriate state of repair. The process is also governed by the provisions of the Act on the Protection and Care of Historic Monuments. Even without relying on that Act, however, the Building Code itself contains a range of direct references to the protection of historic monuments.

The obligation to protect historic monuments when carrying out construction work applies at every stage of the building process, though most fully during a building's operation, which is understandable. The regulations imply that construction work⁷ on or around registered historic monuments must meet more rigorous conditions than work on other objects. When working on an immovable historic monument, in addition to the requirements under the Building Code, the provisions of the Act on the Protection and Care of Historic Monuments must also be taken into account. Compliance with the Building Code therefore does not exempt one from the duty to obtain a permit from the competent historic monument protection authority under the Act, and vice versa⁸.

7 Pursuant to Article 3(7) of the Building Code, construction work shall mean building, as well as rebuilding, assembly, overhauling or demolition of a building item.

8 The Regional Administrative Court judgment of 11 September 2009, I SA/Wa 530/2009, *Legalis* No. 239962, and the Supreme Administrative Court judgment of 19 December 2014, II OSK 1345/13, *Legalis* No. 1330008.

The first provision of the Building Code that provides for the obligation to address the needs of historic monument protection is Article 5(1)(7). It requires that a construction item as a whole, its individual parts, and the associated installations and ancillary equipment are designed and executed, taking into account the anticipated period of use, in accordance with the applicable regulations and the principles of engineering knowledge. This is intended, *inter alia*, to ensure the protection of objects entered in the register of historic monuments and those subject to conservation-area policy.

Section 2 of the same regulation requires that a building object is used for its intended purpose and maintained in an appropriate technical and aesthetic condition, so as to prevent excessive deterioration of its functional properties and technical efficiency. This obligation relates in particular to the requirements set out in Section 1(1)–(7), including the requirement to ensure the protection of objects entered in the register of historic monuments and those subject to conservation area policy.

Another provision concerning the duty to protect historic monuments in the construction process is Article 9 of the Building Code, which allows for derogations from technical and building regulations. Before a building permit, or a decision amending a building permit, is issued in relation to historic monuments, an application must be submitted to the minister seeking authorisation for derogations from requirements specified by the architecture and construction administrative authority. Such an application must include the regional monument conservator's approval of the proposed derogation. This applies in particular to construction items entered in the registry of historic monuments or located in areas subject to conservation protection (Article 9(3)(4) of the Building Code). The regional monument conservator's position on the proposed derogations must be favourable for the competent minister to be able to approve the planned derogation.

Article 29(7) of the Building Code is another provision of particular relevance to construction work on historic real estate. It provides that construction work on building objects entered in the register of historic monuments require a building permit. In an area registered as historic, a notice is sufficient. In either case, however, a permit from the competent regional monument conservator must be attached, in accordance with the provisions on the protection and care of historic monuments.

This provision applies more rigorous requirements to construction work on items and areas entered in the register of historic monuments than on objects not subject to such requirements. These more formalised procedures are intended to restrict construction work that could adversely affect the condition and substance of a historic monument. The requirement to obtain a

permit or submit a notification enables the competent regional monument conservator to express an opinion. As a result, the conservator can participate in the decision-making process and assess proposed building projects and their potential impact on a historic monument (Niewiadomski et al. 2024, comments on Article 29).

In addition, under Article 30(7)(2) of the Building Code, the architecture and construction administration authority may decide to impose an obligation to obtain a permit for a given object or construction work that would normally be subject only to notification. This is possible where such work may breach the provisions of a local land development plan or a building-conditions decision or may adversely affect the state of the environment or the condition of a historic monument. Where the latter risk arises, the legislator empowers administrative authorities to apply stricter requirements to investments capable of jeopardising these cultural values. This mechanism is intended to protect historic monuments and prevent their possible impairment as a result of construction work.

Further special requirements are set out in Article 31 of the Building Code in relation to demolition. This provision allows for certain exemptions from the obligation to obtain a demolition permit. The exemptions are exhaustive and cannot be interpreted broadly. The provision implies that such a permit is not required for the demolition of most buildings and structures, unless they are protected by law as historic monuments. The legislator therefore makes a specific exemption: the exemption from the obligation to obtain a permit, even for simple objects, does not apply to the demolition of building objects, installations, and ancillary equipment entered in the register of historic monuments or subject to conservation policy (Article 31(1b) of the Building Code). This results in a return to the more rigorous general rule.

This accords with Article 36 of the Act, under which a building permit – and thus a permit from a regional monument conservator – is the fundamental condition for any construction work on or around registered historic real estate⁹. The sequence of the procedure is important here (Żak-Stobiecka 2018, 18): a permit from the competent regional historic monument conservator must be issued before the building permit. The authority is obliged to deal with the application for a building permit within 30 days of service. If no response is given by this date, this is treated as an absence of objections to the design solutions proposed in the application (Article 39(1) and (4) of the Building

9 Cf. Article 29(4)(2)) of the Building Code.

Code). Regional historic monument conservators issue their permits by way of administrative decisions¹⁰.

Article 35(3), in conjunction with Article 35(1)(3), of the Building Code applies to this requirement. It provides that, if a permit from the regional historic monument conservator for construction work on a building object or in an area entered in the register of historic monuments is missing, the competent architecture and construction administrative authority should issue a decision requiring that this irregularity be remedied by a specified date. If that deadline is not met, the authority should issue a decision refusing approval of the design and declining to grant a building permit.

A different procedure applies to building objects and areas that are not entered in the national register of historic monuments, but are included in local registers of historic monuments. In such cases, the competent authority issues a permit to build or demolish the object after consulting the regional historic monument conservator¹¹. This consultation is the responsibility of the authority supervising the building or demolition permit, not the investor¹². It should be noted that the opinion of the regional historic monument conservator is binding on the architecture and building authority. Accordingly, a favourable opinion permits the granting of a building permit, whereas an unfavourable opinion precludes it¹³.

The initial design solutions may need to be modified during the course of construction work after the building plans have been approved. This also applies to other terms and conditions of the building permit. The legislator allows investors to make necessary modifications to building plans (Article 36a of the Building Code) (Smarż 2018 5–9; Smarż, 2021, 3–6). This is an exception to the rule that construction work may be carried out only on the basis of a building permit decision (Article 28(1) of the Building Code).

Article 36a mitigates the rigour of this rule in two ways. First, a departure from the design or other conditions of the building permit is permitted where it is immaterial. Second, it introduces a procedure for amending a building permit in cases of major departures, sparing investors the need to obtain a new permit and simplifying the process. However, the rules governing major

10 The Regional Administrative Court in Warsaw judgment of 27 January 2021, VII SA/Wa 1742/20, *Legalis* No. 2541553.

11 Cf. Article 39(3) of the Building Code and the Supreme Administrative Court judgment of 16 March 2018 VII SA/Wa 1067/17, *Legalis* No. 1761476.

12 The Regional Administrative Court judgment of 31 January 2013, II SA/Lu 1048/12, *Legalis* No. 627940.

13 A resolution of 7 Supreme Administrative Court judges of 9 November 1998, OPS 8/98, *Legalis* No. 42327.

departures do not apply to departures from the requirements set out in permits issued by the competent historic monument conservators under the provisions on the protection and care of historic monuments, provided that such a departure is consulted with the competent regional historic monument conservator (Okolski 2024, comments on Article 36a).

A special provision relating to historic items is set out in Article 39 of the Building Code. It is linked to Article 36 of the Act, discussed above. This provision helps to eliminate certain inconsistencies between the Building Code and the Act on the Protection and Care of Historic Monuments. Section 1 provides that construction work on objects or areas entered in the register of historic monuments requires, before a building permit is issued, a permit for such work from the competent regional historic monument conservator. This provision refers to Article 32(1)(2) of the Building Code, under which a building permit decision may be granted after the investor has obtained the permits, approvals, or opinions of other authorities required by special regulations. In this context, these are decisions issued pursuant to Article 36(1) of the Act, which requires a permit from the regional historic monument conservator for work on historic monuments.

Accordingly, Article 39(1) of the Building Code becomes superfluous, since the requirement to obtain a permit from the regional historic monument conservator for work on historic monuments already follows clearly from Article 32(1)(2) of the Building Code, read in conjunction with Article 36(1) of the Act. The procedure under Article 106 of the Code of Administrative Procedure does not apply to proceedings before historic monument protection authorities in cases of this type¹⁴.

Further more stringent regulations are also introduced by Article 67 of the Building Code, which provides for the possibility of issuing a decision requiring the demolition of a building object if an unused or unfinished object is unfit for repair, reconstruction, or completion. In such circumstances, the building supervision authority orders the owner or administrator to demolish the object and clear the site, setting the start and end dates for this work (Section 1). This does not apply to objects entered in the register of historic monuments.

With regard to objects that are not entered in the register of historic monuments but are subject to conservation policies under local land development plans, the building supervision authority orders the owner or administrator to demolish the object and clear the site, setting the start and end dates of this

14 Cf. the Supreme Court decision of 22 February 1996, III ARN 68/95, Legalis No. 29797, remaining applicable under the current regulations.

work after consulting the regional historic monument conservator (Sections 2 and 3). The conservator must express an opinion within 30 days; a failure to do so is treated as consent. The provision thus establishes a legal fiction whereby the consent of the conservation authority is presumed if it does not issue an opinion within the period specified.

Article 67(2) of the Building Code implies that the building supervision authority cannot order, by decision, the demolition of an unused or unfinished object if the object is entered in the register of historic monuments. Where an unused or unfinished object is not entered in the register but is subject to conservation policies under a local land development plan, the building supervision authority may issue a demolition order only after consulting the regional historic monument conservator. The conservator must express an opinion within 30 days of being notified by the building supervision authority of its intention to issue a demolition order. As with the provisions discussed above, the absence of an opinion by that date is treated as consent to the issuing of a decision ordering demolition (Article 67(4) of the Building Code) (Okolski 2024, comments on Article 67).

A change in a building object's use under Article 71(1) of the Building Code is also conditional on an assessment of its impact on the technical condition of the historic object. If a proposed change of use for all or part of a building object could cause an unacceptable deterioration in the condition of a historic monument, the architecture and construction administrative authority raises an objection (Article 71(5)(3b) of the Building Code).

5 The Nature of the Building Code's Provisions on the Protection of Historic Monuments

The provisions of the Building Code discussed above demonstrate the importance the legislator attaches to ensuring an adequate technical condition of historic objects during the building process. These rules operate alongside the Act on the Protection and Care of Historic Monuments, supplementing its provisions in relation to construction work.

The provisions of the Building Code are distinctive, however, in that they are intended to prevent threats to historic real estate. Their application is designed to minimise the risk of such threats and to ensure that construction work does not adversely affect the historic values of building objects. They are aimed at preventing actions that may impair the condition and historic value of historic

objects. They impose special requirements at every stage of the building process involving items entered in the register of historic monuments or subject to conservation policies.

In practice, this means that certain permits – such as a building permit, or a notification required under the provisions on the protection and care of historic monuments – must be obtained before construction work begins. The relevant administrative decisions require due regard to the opinions of regional historic monument conservators, who assess potential threats to historic monuments and the proposed methods of their protection.

This protection covers immovable historic monuments (i.e., real estate), their parts, or ensembles of real estate created by human beings or connected with human activity that constitute evidence of past eras or events and whose preservation is in public interest owing to their historic, artistic, or scientific value (cf. Article 3(2) in conjunction with Article 3(1) of the Act).

The protection of historic monuments ensured by the Building Code is intended to require actions that preserve or restore an adequate technical condition of historic monuments.

6 Conclusion

The system of historic real estate protection in Poland is complex and founded primarily on the Act on the Protection and Care of Historic Monuments. As far as construction work is concerned, the Building Code is an important instrument that sets out the basic principles governing such work.

With regard to items entered in the register of historic monuments, the legislator imposes more rigorous formal requirements for construction work and for the qualifications of those performing independent engineering functions on such items, in order to safeguard their particular values.

The protection of historic monuments is a duty of public administration, primarily of the historic monument protection authorities, including regional historic monument conservators, who are required to issue decisions permitting or prohibiting construction work on historic real estate.

The Building Code provisions related to construction work on historic monuments are preventive, since they consistently require the consent of competent authorities, which base their positive or negative decisions on expert assessments of the merits of each case. In this way, they protect historic real estate.

References

- Banaszak, Bogusław. *Konstytucja Rzeczypospolitej Polskiej. Komentarz*. Warszawa: Wydawnictwo C.H. Beck, 2012.
- Dobosz, Piotr. *Administracyjnoprawne instrumenty kształtowania ochrony zabytków*. Kraków: Oficyna Wydawnicza "Dajwór", 1997.
- Golat, Rafał. *Ustawa o ochronie zabytków i opiece nad zabytkami. Komentarz*. Kraków: Kantor Wydawniczy Zakamycze, 2004.
- Koczara, Wojciech and Pasik, Marcin. "Ochrona zabytków w procesie inwestycyjnym", p. I, *Nieruchomości*, no. 9 (2014): 8–12.
- Mularski, Krzysztof. "O skarbach 'de lege lata' i 'de lege ferenda'", *Monitor Prawniczy*, no. 12 (2009): 643–654.
- Niewiadomski, Zygmunt, Asman, Tomasz, Dessoulavy-Słiwiński, Jędrzej, Janiszewska-Kuropatwa, Elżbieta, Kucharski, Krzysztof, Plucińska-Filipowicz, Alicja and Siegień, Jerzy. *Prawo budowlane. Komentarz*, Legalis el.: Wydawnictwo C.H. Beck, 2004.
- "Prawo budowlane. Komentarz", in *Prawo rynku nieruchomości. Komentarz*, ed. by Dariusz Okolski. Legalis el.: Wydawnictwo C.H. Beck, 2024.
- Pruszyński, Jan. *Dziedzictwo kultury Polski. Jego straty i ochrona prawna*, vol. 1. Kraków: Kantor Wydawniczy "Zakamycze", 2001.
- Sienkiewicz, Tomasz. "Aksjologia stosowania ustawy o ochronie zabytków i opiece nad zabytkami", in *Aksjologia prawa administracyjnego*, vol. II, ed. by Jan Zimmerman. Warszawa: Wolters Kluwer Polska, 2017.
- Sienkiewicz, Tomasz. "Służba dobru wspólnemu i tożsamości narodowej w ochronie zabytków", in *Służąc dobru wspólnemu*, ed. by Katarzyna Kułak-Krzysiak and Jerzy Parchomiuk. Lublin: Wydawnictwo KUL, 2016.
- Smarż, Joanna. "Dziedzictwo kulturowe jako dobro publiczne", in *Dobra publiczne w administracji*, ed. by Marta Woźniak and Ewa Pierzchała. Toruń: Wydawnictwo Adam Marszałek, 2014.
- Smarż, Joanna. "Nowe zasady istotnego odstąpienia od zatwierdzonego projektu budowlanego lub innych warunków pozwolenia na budowę", *Budownictwo i Prawo* no. 1 (2018): 5–9.
- Smarż, Joanna. "Szczególna rola samorządu terytorialnego w zakresie ochrony zabytków i opieki nad zabytkami", *Ius Et Administratio* no. 4 (53) (2023): 179–193.
- Smarż, Joanna. "Szczególne warunki prowadzenia robót budowlanych przy zabytkach nieruchomych", *Budownictwo i Prawo*, no. 2 (2019): 9–11.
- Smarż, Joanna. "Uprawnienia do kwalifikacji zamierzonego odstąpienia od zatwierdzonego projektu budowlanego", *Budownictwo i Prawo* no. 3 (2021): 3–6.
- Smarż, Joanna. "Zakres i formy ochrony zabytków nieruchomych w polskim porządku prawnym", in *600 lat parafii Zakrzew. Aspekty historyczne, kulturowe i prawne*, ed. by

- Agata Świątkowska and Wojciech Wojtyła. Radom: Instytut Naukowo-Wydawniczy Spatium, 2018.
- Zajadło, Jerzy and Zeidler, Kamil. "Wartość zabytków", in *Leksykon prawa ochrony zabytków. 100 podstawowych pojęć*, ed. by Kamil Zeidler. Warszawa: Wydawnictwo C.H. Beck, 2010.
- Zalasińska, Katarzyna. *Ochrona zabytków. Orzecznictwo z komentarzem*. Warszawa: LexisNexis, 2010.
- Zalasińska, Katarzyna and Zeidler, Kamil. 2012. "Problematyka wartościowania jako podstawy rozstrzygnięć wojewódzkiego konserwatora zabytków", in *Wartościowanie w ochronie i konserwacji zabytków*, ed. by Bogusław Szmygin. Warszawa–Lublin: Cyfrowa Biblioteka Politechniki Lubelskiej, 2012.
- Zeidler, Kamil. "Dobro kultury jako przedmiot restytucji", in K. Zeidler, *Restytucja dóbr kultury ze stanowiska filozofii prawa*. Warszawa: Lex a Wolters Kluwer Business, 2011.
- Zeidler, Kamil. "Pojęcie 'dziedzictwa narodowego' w Konstytucji RP i jego prawna ochrona", in *Zabytki – prawo i praktyka*. Gdańsk–Warszawa: Wydawnictwo Uniwersytetu Gdańskiego, 2017.
- Żak-Stobiecka, Anna. "Udział wojewódzkiego konserwatora zabytków w procesie urbanistyczno-budowlanym. P. II", *Nieruchomości* no. 4 (2018): 18–23.

The Expropriation of Historic Real Estate as an Instance of Realising the Constitutional Principle of National Heritage Protection

Małgorzata Pracka

Abstract This study examines the expropriation of historic real estate in the context of the constitutional foundations of the principle of national heritage protection and the guaranteed protection of property rights, while identifying the substantive legal determinants of expropriation. The protection of national heritage – as a safeguard of national identity, the continuity of cultural tradition, and the value system – is a major principle to be upheld by public administration. At the same time, the legislator has introduced an expropriation mechanism that, given the guaranteed protection of property rights, must be regarded as a measure of last resort for achieving public objectives.

This article addresses the expropriation of historic real estate from the perspective of maintaining the constitutional standards for expropriation, and focuses on specifying the public objectives that justify its application in connection with the constitutional principle of protecting the national heritage. The statutory regulations are assessed concerning the notion of immovable historic monument and the legal definition of public objective that determines the application of expropriation with regard to historic real estate. These concepts are of primary importance for protecting both the national heritage and property rights.

Keywords national heritage – expropriation – historic real estate – public objective

1 Introduction

This study examines the expropriation of historic real estate and identifies the constitutional foundations for its application, which profoundly affect property entitlements. The protection of national heritage, regarded as a fundamental and major duty of public authorities, is also anchored in constitutional provisions. The basis for this lies in the significance of such protection for preserving national identity, articulated as early as the preamble to the Polish Constitution¹, which emphasises the need to preserve the culture rooted in

¹ The Constitution of the Republic of Poland, dated 2 April 1997 (OJ No. 78, item 483 as amended).

the Christian heritage of the nation and in universal human values, and the undertaking to pass on to future generations everything of value accumulated over more than a millennium of achievements.

On the one hand, the protection of national heritage is a constitutionally protected value; on the other, there is another constitutional principle, namely the protection of property rights. The latter is addressed in Article 20 of the Polish Constitution, which identifies private property as the foundation of the economic system and of ownership relations in Poland. The protection of property is also guaranteed by Article 21(1) of the Polish Constitution, which provides uniform protection of property without subjective distinctions. This guarantee is regarded as a constitutional duty of the state, fulfilled through both legislation (including the fundamental legal institutions defining the content of ownership and the means of protecting property rights) and the actual actions of state authorities in relation to assets held by individuals². These guarantees are complemented by Article 64 of the Polish Constitution, which provides for the subjective protection of ownership, that is, the protection of a specific right held by a particular person³. This provision is the basis of a public subjective right encompassing the constitutionally guaranteed freedom to acquire, hold, and dispose of property. Approaching property rights from the perspective of subjective rights allows individuals to avail themselves of legal remedies that safeguard those rights, in particular against interference by the legislator or by authorities issuing secondary legislation (Banaszak 2004, 250).

These constitutional guarantees of protection of property rights are not inviolable. Article 21(2) of the Polish Constitution permits expropriation, which infringes owners' rights and allows for the removal of property rights by a public authority. This mechanism is linked to the need to pursue a public objective and the obligation to pay fair compensation. Such interferences by public authorities, which affect the essence of property rights, are nonetheless regarded as exceptions to the guaranteed protection of property rights, since expropriation may be exercised legally provided that a public objective is pursued and fair compensation is paid. These substantive legal determinants of the expropriation instrument set the permissible limits of interference with the constitutionally protected right to property.

Moreover, the constitutional regulation of expropriation cannot be read in isolation from other constitutional norms, values, and principles. Expropriation is indeed the most far-reaching form of interference; it would

2 Constitutional Court judgment of 12 January 1999, ref. P 2/98, OTK 1999/1/2; Constitutional Court judgment of 12 January 2000, ref. P 11/98, OTK ZU 1/2000, item 3.

3 Constitutional Court judgment of 29 July 2013, ref. SK 12/12, OTK-A 2013/6/87.

therefore be unreasonable to argue that the conditions applicable to ordinary, less radical restrictions need not be met in the case of this most severe interference. Nor can it be maintained that the payment of even the fairest compensation relieves public authorities of the requirement to resort to expropriation only where necessary and to act proportionately. Viewed in this light, it should be emphasised that only expropriation meeting the general criteria for restricting rights and liberties – arising from Article 21(2) – is compatible with the Constitution (Garlicki 2003, 14–16). In addition, although this is not stated expressly in Article 21(2), the permissibility of expropriation is linked to the existence of statutory grounds for its application, which provides specific protective guarantees against potential arbitrariness of public administration (Radajewski 2018, 29–30).

The Polish Constitution does not determine any mechanisms or scope of expropriation. Nor does it specify any criteria for qualifying an objective as public. This is due primarily to the nature of a constitutional law, which is autonomous from ordinary legislation. The expropriation mechanism is therefore specified in legislation, although the interpretation of its provisions should be guided by the Constitution⁴.

Accordingly, the expropriation of historic real estate must be addressed in greater detail in ordinary legislation. This paper assesses the statutory provisions governing the expropriation of historic real estate in order to determine if the legislation fits within the constitutional framework of expropriation. The analysis focuses on identifying the public objectives that condition its application in connection with the constitutional principle of protecting the national heritage, in order to demonstrate that the protection of the national heritage – a crucial duty of the state – may justify executive interference with the constitutionally protected right to property, provided, however, that expropriation, as a special means of interfering with ownership rights, is subject to statutory conditions and proportionate action by public authorities.

The paper begins by examining the definition of a historic monument in the Act on the Protection and Care of Historic Monuments⁵, since its meaning determines the admissibility of expropriation under the Real Property Administration Act⁶. The catalogue of public objectives listed in the Act is central to assessing whether the expropriation of historic real estate is permissible. Despite certain shortcomings in the definition that may create a risk of abuse by public administration, a rigorous interpretation of the public

4 Constitutional Court judgment of 14 March 2000, ref. P. 5/99, OJ 2000, No. 17, item 229.

5 Act on the Protection and Care of Historic Monuments of 23 July 2003 (OJ 2024, item 1292).

6 The Real Property Administration Act of 21 August 1997 (OJ 2024, items 1145, 1222).

objective justifying executive interference should act as a safeguard against public power resorting too readily to expropriation, and thus as a protective guarantee for owners of historic real estate.

It must also be stressed that the expropriation of historic real estate, although constitutionally grounded, should be used only as a measure of last resort and with due regard for both the public interest and owners' rights. Maintaining a balance between these values is key to achieving public objectives and protecting national heritage. This analysis will employ the dogmatic method, the primary method used in the legal sciences.

2 Protection of National Heritage from the Constitutional Perspective

The protection of national heritage and cultural assets has its normative basis in constitutional provisions. Article 5 of the Polish Constitution provides that the Republic of Poland shall safeguard the independence and integrity of its territory, ensure human and civic freedoms and rights and the safety of its citizens, safeguard the national heritage, and protect the environment, guided by the principles of sustainable development. Article 6(1) emphasises, meanwhile, that the Republic of Poland shall provide conditions for the dissemination of, and equal access to, cultural assets, which are a source of the Polish nation's identity, survival, and development. Article 6(2) states that the Republic of Poland shall assist Poles abroad in maintaining their links with the cultural heritage.

Guarding the national heritage is a fundamental objective of the state. These duties are incumbent, above all, on public authorities, which must enforce the principle of national heritage protection in decisions and actions within their competences. The legal nature of Article 5 suggests that this is a programmatic provision requiring public authorities to participate in protective efforts. These requirements do not give rise to any enforceable claims that individuals or social groups may assert against authorities in order to secure the outcomes indicated by this provision; nevertheless, its wording establishes a general political responsibility of those authorities, to be assessed against these requirements (Garlicki and Zubik 2016, LEX). The absence of a legal definition of national heritage does prevent Article 5 of the Polish Constitution from serving as the basis of legal obligations on the part of authorities, institutions, or citizens in this area; however, the constitutional declaration cannot be regarded as without import as a guideline for the actions of all state authorities,

within their competences, regarding the heritage *sensu largo* (Pruszyński 2001, 514).

Legislation regards the national heritage as a material and spiritual element in the history of the Polish state and society that evidences its identity, equal standing among other nations, and a foundation for further development (Sarnecki 2016, 234). In principle, the concept of heritage rests on a community's attitude to the past, which enables the community to decode values from it and to sustain memory (Kowalski 2013, 15–16). Safeguarding the national heritage fosters a sense of national identity and guarantees the nation's permanence and the continuity of the state; accordingly, heritage protection is an overarching objective, while culture and care for it are 'meta-objectives' of the state (Kosińska 2014, 191–192, 197, 199).

Guarding national heritage is inextricably linked with guaranteeing access to cultural assets. Article 6 of the Polish Constitution, which expresses a programmatic principle, describes the manner in which public authorities are to act, requiring them to provide conditions for dissemination of and access to cultural assets and resources. The foregoing constitutional provisions clearly imply the safeguarding of national heritage requires the protection of and guaranteed access to cultural assets (Tuleja 2023, LEX). Although the Constitution contains no legal definition of cultural assets, it is generally accepted that the constitutional legislator had to consider the term's pre-existing meaning before the Constitution entered into force and became relevant to the domestic and international law on the protection of historic monuments. This does not, of course, mean that the statutory or international legal usage and the constitutional usage are identical, since the latter is autonomous. Reference to pre-existing notions serves only to address pre-constitutional concepts in the process of interpreting constitutional provisions. Article 73 of the Polish Constitution must also be borne in mind, as it guarantees everyone the freedom to make use of cultural assets. The term 'cultural assets' in this provision should be understood broadly, encompassing tangible and intangible assets, moveable and immoveable assets, and assets with a historic, scientific, artistic, or archaeological value⁷.

National heritage is a particular form of heritage, viewed through the lens of history and tradition, with which members of a given nation identify. Cultural heritage comprises a set of moveable and immoveable resources, together with associated spiritual values and historical and moral phenomena, deemed

7 Constitutional Court judgment of 25 May 2016, ref. Kp 2/15, OTK-A 2016/23.

worthy of legal protection for a society and its development and of being passed on to future generations (Pruszyński 2001, 49–50). Historic monuments are therefore integral components of heritage. The concept encompasses both individual works of architecture and larger entities, such as urban and rural ensembles and places that testify to civilisations, significant transformations, or historic events⁸. It extends not only to great works but also to modest items that, over time, have acquired cultural significance, embodying values and ideas important for historical and social reasons. Accordingly, historic monuments form part of the broader category of cultural assets (Zasina 2013, 133).

With regard to the constitutional anchoring of the protection of national heritage, and the emphasis placed on respect for this value within the legal order, it should be noted that the Constitution's declarations and guarantees in relation to immoveable historic monuments are served by the Act on the Protection and Care of Historic Monuments, together with the expropriation provisions of the Real Property Administration Act. The latter permits interference with ownership rights in order to pursue the public objective of caring for real property that constitutes a historic monument as defined by the provisions on the protection and care of historic monuments.

3 The Notion of Historic Real Estate

The protection of national heritage is developed normatively in the Act on the Protection and Care of Historic Monuments. The constitutional provisions determine only the state's basic duties in relation to the protection of national heritage and cultural assets, and set the desired direction of action; the detailed rules are laid down in statutes (Skrzydło 2000, 17–18).

Real estate is a special cultural asset that is attractive to the market, as it can satisfy a range of both individual and collective needs. Historic real estate is of particular importance from the perspective of the public interest. In legal terms, a historic monument falls within the domain of administrative law. This is illustrated by the possibility that part of a piece of real estate may be treated as a moveable historic monument, for example, a wall on which frescoes are discovered, although it clearly remains part of the real property in the light of civil law and under the definition of real estate in Article 46 of the Civil Code⁹. Another possibility is when part of a building or its surroundings is recognised

8 The Venice Charter, available at: <http://www.wam.piib.org.pl/wp-content/uploads/2015/10/publikacja-karta-wenecka-1964.pdf> [accessed 18 Nov. 2024].

9 The Civil Code of 23 April 1964 (OJ 2024, items 1061, 1237).

as a historic monument, which clearly restricts the scope of the owner's rights in the real estate (Ruszkiewicz 2009, 106). This understanding of a historic monument, and the legislator's approach, are grounded in the constitutional principle of protecting the national heritage, which is given practical effect through statutory regulations.

The notion of a historic monument is set out in Article 3(1) of the Act on the Protection and Care of Historic Monuments, under which a historic monument is real estate or a moveable object, or their parts or ensembles, created by human beings and connected with human activity, which constitute evidence of past eras or events and whose preservation is in the public interest owing to their historic, artistic or scientific value. Article 3(2) defines an immoveable historic monument as a real estate, part of real estate, or an ensemble of real estate, as referred to in Article 3(1). The doctrine notes that these definitions contain a wide range of vague and value-laden concepts, from determining whether objects are 'evidence of past eras or events', through assessing their 'historic, artistic or scientific value', to concluding whether their preservation 'is in the public interest'. The discretion enjoyed by an authority applying the statutory definition is therefore undeniable. This may give rise to tensions and conflicts between public administration and the owners or holders of historic monuments, since their interests differ. On the one hand, there is the public interest, which may justify executive interference with property rights and the possible expropriation of historic real estate; on the other, there are constitutionally based guarantees of property-right protection, which require public authorities to use that instrument only if necessary and proportionate and only upon fulfilment of the substantive legal conditions. Judicial review of the legality of administrative actions (Parchomiuk 2019, 35–51) is crucial to preventing the limits of acceptable interference from being violated.

Given this degree of ambiguity, the application of legal instruments affecting historic monuments, including in particular expropriation, may give rise to serious interpretative doubts. The limits on how public authorities may construe the concept of historic monuments when resorting to expropriation must therefore be set by a restrictive interpretation that takes account of the exceptional, last-resort nature of this public-law interference with constitutionally protected property rights, and of the need to minimise the risk of abuse by public administration.

Judicial decisions stress that the legal definition of a historic monument hardly implies that only an object of exceptional historic, artistic, or scientific value may be a historic monument. Above-average value in itself is not required by the legislator. There are many historic monuments that are characteristic of the art of a given time, yet are not for that reason exceptional in

any way. The value of a historic monument lies in its being evidence of a past era that deserves special protection precisely because the memory of former times must be preserved. Exceptionality is of no consequence; what matters is historic, artistic or scientific value that is important in the public interest¹⁰. Qualification as an immoveable historic monument restricts property rights to such a far-reaching extent that it should be based only on unequivocal and exhaustive findings. The owner of an item classified as a historic monument must be able to understand the reasons of an authority deciding to have the object entered as a historic monument. The statutory definition of a historic monument implies that its preservation must be in the public interest, which should be weighed against the individual interest of the real estate owner. The authority ought to demonstrate why the public interest is so weighty as to justify interference with the legal position of the real estate owner¹¹.

The difficulty in defining an immovable historic monument is partly due to the fact that the definition is substantive, not formal, as protection extends to any object (or its part) or ensemble meeting the conditions laid down in Article 3(1) and (2) of the Act on the Protection and Care of Historic Monuments, regardless of whether it is entered in the register or records (Kotulski 2011, 5–25). Moreover, real estate becomes a historic monument if at least part of it is classified as a historic monument¹².

Such a conception of a historic monument introduces a degree of arbitrariness into determining the status of particular real estate: its historic, artistic, or scientific value whose preservation is in the public interest must be taken into account. Two values clash here: the interest of an individual real estate owner and the public interest that justifies interference with the constitutionally protected property right. It is emphasised, though, that the state enjoys wide discretion as to what is ‘in the general interest’, especially in connection with cultural heritage. It cannot be forgotten property, including private ownership, fulfils a range of public functions that should be considered when determining whether a ‘fair balance’ is maintained between the requirements of the general interest and the fundamental rights of private individuals¹³.

Seen from the viewpoint of the constitutional principle of national heritage protection, and bearing in mind that the protection of property rights is not

10 Supreme Administrative Court judgment of 19 June 2024, ref. II OSK 2410/21, LEX No. 3749949.

11 Regional Administrative Court in Gdansk judgment of 13 March 2024, ref. II SA/Gd 745/23, LEX No. 3699051.

12 Supreme Administrative Court judgment of 8 August 2006, ref. II OSK 1232/05, LEX No. 267007.

13 European Court of Human Rights judgment of 29 March 2011, 33949/05, LEX No. 784737.

absolute, the application of the expropriation instrument seems reasonable. One should not, of course, lose sight of the constitutional framework of the guaranteed protection of property rights, but there can be no doubt that the legislator has permitted the use of expropriation in particularly justified cases which, combined with the principle of national heritage protection, applies to immoveable historic monuments as well. The notion of an immoveable historic monument may in practice give rise to interpretative doubts due to value-judgment terms contained in its definition, which may also create a risk of an extensive margin of manoeuvre for public administration authorities. Under the democratic rule of law, however, the need to weigh cultural assets against constitutional values should restrain public administration authorities, and reduce the risk of their resorting too readily to expropriation of immoveable historic monuments. Maintaining a balance between these values, and bearing in mind that any interference with a constitutional right must have a legal basis, is a major guideline for public authorities. They are charged with safeguarding the national heritage, on the one hand, yet can only act within the legally permissible limits of the expropriation instrument in relation to historic real estate, on the other hand, which makes a more precise specification of public objectives in this regard of paramount importance.

4 Historic Real Estate as a Public Objective Authorising Expropriation

Classification as an immoveable historic monument has grave legal consequences for real estate owners, restricting use and imposing a series of duties under the Act on the Protection and Care of Historic Monuments. Historic real estate has a special status in the legal order, and its role and significance for future generations are considerable. The legislator has therefore decided that the application of the expropriation instrument to immovable historic monuments is acceptable, by designating as a public objective, in Article 6(5) of the Real Estate Administration Act, the care of real estate that constitutes a historic monument within the meaning of the Act on the Protection and Care of Historic Monuments.

The concept of care for historical monuments may give rise to interpretative doubts, with grave legal consequences when the expropriation instrument is applied. Such care therefore needs to be specified precisely. Judicial decisions state that care of historic monuments should comprise ensuring conditions for the research and documentation of a historic monument; conservation, restoration, and construction work on a historic monument; securing and

maintaining a historic monument and its surroundings in the best possible condition; using a historic monument in a manner that ensures the continued preservation of its value and maximum utility for the public in view of its historic or scientific value; and the popularisation and dissemination of knowledge about a historic monument and its significance for history and culture¹⁴.

This care for historic monuments, grounded in the constitutional principle of national heritage protection, cannot be viewed solely in terms of the duties imposed on an individual owner of an immovable historic monument under the Act on the Protection and Care of Historic Monuments. In exceptional circumstances, it may take the form of action by the public administration authorities themselves, where required by the principle of protecting the national and cultural heritage. In this context, the expropriation instrument is intended to ensure that public authorities comply with this constitutional principle, since historic real estate is not merely a private cultural asset to be enjoyed by its owner, but a shared good whose preservation in the best possible condition, while emphasising its historic, scientific, and cultural values, is in the interest of future generations.

Such action by public authorities accords with the concept of a public objective, with Article 21(2) of the Polish Constitution as its primary normative source. The notion of a public objective is vague and is associated with the need to meet general societal needs of an indeterminate group of persons. The boundaries of a public objective in the case of real estate expropriation are set by whether the action falls within the concept of the public interest (Gdesz 2002, 24). Identifying and specifying public objectives is one means of realising the public interest. The Polish Constitution does not set out criteria for qualifying an objective as public, or identify its specific characteristics (Siewierska 2022, 60). This is because constitutional provisions are assumed to accommodate socio-economic change; accordingly, expropriation in its constitutional form must be regarded as requiring specification in legislation (Garlicki 2003, 15).

The public objectives are specified in Article 6 of the Real Property Administration Act, although the catalogue is not closed and allows the legislator to act where the public interest needs to be specified in ordinary legislation. A public objective authorising expropriation may in practice arise from current socio-economic needs. Taking the democratic rule of law seriously does not mean losing sight of values (rights) other than property rights,

14 Regional Administrative Court in Warsaw judgment of 23 April 2009, ref. I SA/Wa 48/09, LEX No. 550267; Regional Administrative Court in Warsaw judgment of 24 February 2015, ref. VII SA/Wa 2150/14, CBOSA.

or assuming that property rights have priority over other rights protected by the Constitution¹⁵. A rational legislator must assume the need to respond to general societal needs that require legislative intervention in the face of ongoing change. However, resorting to the expropriation instrument in order to pursue a public objective must also accord with other constitutional principles and values, above all the requirements of necessity and proportionality in the exercise of public power, which determine the legality of expropriation together with the existence of statutory grounds legitimising executive action that interferes with property rights.

With regard to historic real estate, this legitimisation is founded on Article 6(5) of the Real Property Administration Act. Bearing in mind the constitutional conditions governing the protection of property rights, however, the public objective for which real estate is expropriated should be defined narrowly, and any ambiguities should be interpreted in favour of the party being expropriated, since it is that party's right that is taken for the benefit of the public interest.¹⁶

A strict interpretation of the public objective requires an accurate delineation of the scope of the care for historic monuments involved, and a precise definition of it, in order to avoid the charge of disregarding the legal limits of expropriation. Article 3(12)–(15) of the Act on the Protection and Care of Historic Monuments is worth citing here: not only individual immovable historic monuments, but also historic urban or rural layouts, historic building ensembles, cultural landscapes, and the surroundings of historic monument are subject to protection and care. The doctrine notes, however, that the public objective under Article 6(5) of the Real Property Administration Act is not care for historic monuments in a broad sense, but care for real estate that constitutes a historic monument. As a result, not every immovable historic monument, but only one that is also a real estate, can be considered in connection with the public objective under Article 6(5) (Bończak-Kucharczyk 2024, LEX).

Judicial decisions underline that not every investment in an area entered in the register of historic monuments as a spatial layout or a walled urban layout, but only one closely connected with the care of real estate that constitutes a historic monument can be treated as a public investment pursuing the public

15 Supreme Administrative Court judgment of 21 February 2024, ref. II OSK 1269/21, LEX No. 3705275.

16 Supreme Administrative Court judgment of 13 September 2018, ref. I OSK 2583/16, LEX No. 2566404.

objective laid down in Article 6(5) of the Real Property Administration Act.¹⁷ This strict understanding of a public objective follows from the legal regime governing the instrument of expropriation exercised by public authorities, and is also reflected in adherence to the literal wording of the public objective, namely care of historic real estate.

Article 50(3) of the Act on the Protection and Care of Historic Monuments also needs to be mentioned. It provides that a *staroste*, at the request of a regional historic monument conservator, may decide to secure a registered moveable historic monument by way of temporary seizure until the risk of its damage or destruction is removed. The provisions on real estate administration apply as appropriate. Article 5(4)(2) further states that, if that risk cannot be removed, a moveable historic monument may be seized by the *staroste*, at the request of the regional historic monument conservator, for the benefit of the State Treasury or the local community competent for the location of that monument, in accordance with the provisions of real estate administration.

The supervisory measures provided for in this provision, triggered where there is a risk of damage to or destruction of a historic monument, reflect the legislator's particular approach to registered immovable historic monuments. The inclusion of such an instrument, which interferes with the constitutionally protected right to property, clearly derives from the principle of protecting the national and cultural heritage. In this context, immovable historic monuments should be treated as public cultural assets whose use is in the interest of their owners and holders, while public administration, or other entities acting under state authority, can effectively require that they be respected and preserved (Zalasinska 2010, 226).

In consequence, an immovable historic monument entered in the register may be expropriated where conservation protection cannot otherwise be carried out effectively. The doctrine emphasises that Article 50 of the Act on the Protection and Care of Historic Monuments should be regarded as a *lex specialis* in relation to the expropriation provisions in the Real Property Administration Act. A question therefore arises as to whether the general expropriation procedure may be applied to a registered historic monument. The answer should be negative; otherwise, the separate regulation in Article 50 of the Act on the Protection and Care of Historic Monuments would be redundant. This implies that the procedure under the Real Property Administration Act may be applied to historic monuments not entered in the register (Parchomiuk 2019, 35–51).

17 Regional Administrative Court in Kielce judgment of 16 June 2021, ref. II SA/Ke 463/21, LEX No. 3197151.

Such a position must be justified by the particular nature of expropriation, which in a democratic state governed by the rule of law may be initiated only where it becomes legally necessary to pursue a precisely defined public objective, which must be interpreted narrowly. This is a guideline for public authorities applying the institution of expropriation, which should be regarded as the ultimate form of interference with the constitutionally protected property right. Nor should the requirement of paying fair compensation be overlooked, as it is a criterion of the legality of expropriation.

Fair compensation is usually understood in financial terms. It is regarded as just and equivalent, that is, as allowing the reproduction of the asset or property position lost as a result of expropriation.¹⁸ It is intended to make good the economic damage sustained by the owner of the expropriated right and should not be reduced by the method of its calculation or payment.¹⁹ At the same time, the principle of the hierarchy of legally protected values allows the legislator, in certain exceptional circumstances, to relativise the amount of compensation, since public and private interests must be balanced, while observing the rule of proportionality. As a result, fully equivalent compensation may not be fair, whereas compensation that is not fully equivalent may still be regarded as fair.²⁰

The constitutional standard of expropriation includes the requirement of restorative justice, which assumes that expropriation may be permitted subject provided that fair compensation is determined under the relevant expropriation laws and paid without undue delay – an important safeguard of owners' interests.²¹

5 Conclusion

The protection of national and cultural heritage is among the major values protected by constitutional norms. Their anchoring in Articles 5 and 6 of the Polish Constitution is intended to guarantee the survival of the nation and the continuity of the state. National heritage is undoubtedly among those issues deeply rooted in the axiology of the Polish Constitution and the values it embraces. It is noted that national heritage forms part of the common good (Frankiewicz-Bodynek 2018, 206–207). The concept of the common good

18 Constitutional Court judgment of 21 June 2005, P 25/02, OTK – A 2005, No. 6, item 65.

19 Constitutional Court judgment of 19 June 1990, K 2/90, OTK 1990, No. 1, item 3.

20 Constitutional Court judgment of 16 October 2012, K 4/10, OTK-A 2012/9/106.

21 Constitutional Court judgment of 25 May 2016, Kp 2/15, M.P. 2016, item 792.

relates to the permanence of statehood and the nation, the sovereignty of the state and the nation, historical experience, relationships among communities of various kinds and their attitudes to the state, orientation towards fundamental values, the obligation to serve the state, and care for the future. From this perspective, the protection of the national heritage fulfils the concept of the common good (Zdyb 2001, 190–191).

The possibility of applying expropriation to historic real estate is an instance of the protection of the national and cultural heritage, understood as part of the common good and grounded in the Constitution. The substantive legal conditions for expropriation point to the restrictive nature of this measure, which may be applied only for the purpose of pursuing a strictly defined public objective and subject to the payment of fair compensation. The acceptability of expropriation must also be assessed in light of the existence of statutory grounds for its application, which reflects the guarantees of protection of property rights and sets barriers against public power resorting rashly to this instrument.

In giving effect to the legislator's guidelines on the protection of property right and the national heritage, and to the constitutional legal determinants of expropriation, it should be noted that these guarantees are reflected in the Real Property Administration Act, which specifies the public objective authorising the expropriation of historic real estate. In this respect, the Real Property Administration Act refers to the concept of historic real estate defined in the Act on the Protection and Care of Historic Monuments.

The notions of both immovable historic monuments and care for such monuments are broad, which may pose a risk to owners, since, for example, part of their real estate may be classified as a historic monument. Despite this framework for understanding and caring for immovable historic monuments, any initiation of expropriation by public authorities must be based on rigorous review, since what is at stake is, on the one hand, the constitutional value of protecting the national heritage, including immovable historic monuments, and, on the other, the constitutional framework for the protection of property rights and the substantive legal determinants of expropriation, which protect real estate owners against unauthorised interference of public authorities. Such interference is, after all, subject to judicial review, which should eliminate any abuses of public power that infringes on owners' rights. In addition, the assessments of particular instances of public-law interference with the property right must tend towards a narrow interpretation of public objectives, understood in accordance with their literal wording.

It should also be emphasised that the classic expropriation regime under the Real Property Administration Act must be treated as distinct from the

expropriation procedure set out in Article 50(4) of the Act on the Protection and Care of Historic Monuments. This restrictive approach is intended to ensure that expropriation is used only in situations strictly defined by statute, as reflected in the Polish legal system's protection of both the national heritage and property rights.

References

- Banaszak, Bogusław. *Prawo konstytucyjne*. Warszawa: C.H. Beck, 2004.
- Bończak-Kucharczyk, Ewa. *Ustawa o gospodarce nieruchomościami. Komentarz*. LEX el, 2024.
- Frankiewicz-Bodynek, Anna. "O należyтым pojmowaniu dziedzictwa narodowego i jego aksjologicznych podstawach", in *Dookoła Wojtek, Księga pamiątkowa poświęcona Doktorowi Arturowi Wojciechowi Preisnerowi*, ed. by Ryszard Balicki and Mariusz Jabłoński. Wrocław: Wydawnictwo Uniwersytetu Wrocławskiego, 2018: 199–210.
- Garlicki, Lech. *Konstytucja Rzeczypospolitej Polskiej. Komentarz*. Vol. III. Warszawa: Wydawnictwo Sejmowe, 2003.
- Garlicki, Lech, Zubik, Marek. *Konstytucja Rzeczypospolitej Polskiej. Komentarz*. Vol. I. LEX el, 2016.
- Gdesz Mirosław. *Cel publiczny w gospodarce nieruchomościami*. Zielona Góra: Zachodnie Centrum Organizacji, 2002.
- Kosińska, Anna. *Kulturalne prawa człowieka. Regulacje normatywne i ich realizacja*. Lublin: Wydawnictwo KUL, 2014.
- Kotulski, Mariusz. "Problematyka ochrony zabytków w planowaniu przestrzennym", *Administracja. Teoria – Dydaktyka – Praktyka*, no. 2 (2011): 5–25.
- Kowalski, Krzysztof. *O istocie dziedzictwa europejskiego. Rozważania*. Kraków: Międzynarodowe Centrum Kultury, 2013.
- Parchomiuk, Jerzy. "Prawne formy działania wojewódzkiego konserwatora zabytków w sferze wywłaszczania zabytków", *Przegląd Prawa Publicznego* no. 2 (2019): 35–51.
- Pruszyński, Jan. *Dziedzictwo kultury Polski. Jego straty i ochrona prawna*. Vol. II. Kraków: Kantor Wydawniczy Zakamycze, 2001.
- Radajewski, Mateusz. "Normatywna treść konstytucyjnych przesłanek dopuszczalności wywłaszczenia", *Przegląd Legislacyjny*, no. 1 (2018): 23–39.
- Ruszkiewicz, Beata. "Ochrona nieruchomości zabytkowych jako przykład ingerencji państwa w sferę prawa własności", *Gdańskie Studia Prawnicze*, vol. XXI (2009): 99–114.
- Sarnecki, Paweł. "Uwagi do art. 5 Konstytucji", in *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, ed. by Lech Garlicki and Marek Zubik. Vol. I. Warszawa: Wydawnictwo Sejmowe, 2016.

- Siwierska Anna. "Publiczna korzyść, prywatna strata – teoretyczne i praktyczne konsekwencje rozszerzania definicji celu publicznego", *Przegląd Ustawodawstwa Gospodarczego*, no. 2 (2022): 58–66.
- Skrzydło, Wiesław. *Konstytucja Rzeczypospolitej Polskiej. Komentarz*. Kraków: Kantor Wydawniczy Zakamycze, 2000.
- Tuleja, Piotr. *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, LEX el, 2023.
- Zalasińska, Katarzyna. *Prawna ochrona zabytków nieruchomych w Polsce*. Warszawa: Wolters Kluwer Polska, 2010.
- Zasina, Jakub. "Między pojęciami zabytku i dziedzictwa kulturowego. Od zasobu do czynnika rozwoju jednostki terytorialnej", *Zeszyty Naukowe Politechniki Częstochowskiej Zarządzanie*, no. 12 (2013): 131–142.
- Zdyb, Marian. "Dobro wspólne w perspektywie artykułu 1 Konstytucji RP", in *Trybunał Konstytucyjny. Księga XV-lecia*, ed. by Ferdynand Rymarz and Adam Jankiewicz. Warszawa: Biuro Trybunału Konstytucyjnego, 2001.

The Legal Protection of Exhibits Loaned from Abroad

Emilia Gulińska

Abstract This paper analyses and evaluated legal regulations in Poland governing the protection of exhibits loaned from abroad. The nature of museum immunity is discussed in this context. It should be emphasised that this institution provides a legal guarantee protecting exhibits against third-party claims, thereby contributing to the enhancement of international museum exchange. A further contribution to such exchange is made by following the rules on loans and museum cooperation applied in European Union countries; however, the Polish legal system requires reducing the insurance value of loaned items so that more interested parties may benefit from warranties. This analysis of the prevailing legislation indicates that granting exhibition organisers the right to challenge the termination of the legal protection of moveables would improve Polish law. Such a step would help to prevent possible disputes between the competent minister and exhibition organisers concerning circumstances and dates of the protection's end. The dogmatic-legal method is the principal method utilised in this study.

Keywords exhibit – legal protection – moveable – museum immunity

1 Introduction

Museums are active players in the art market: they make purchases, accept donations, and take part in exhibitions abroad, whose organisation has for some time been strongly supported in order to enhance international museum exchange (Kowalski 2018, 288). In this connection, Polish museums engaged in international exchange are increasingly encountering a variety of legal instruments designed to protect exhibits loaned from abroad against claims raised by third parties. The physical transfer of a moveable from one state to another involves not only the usual risks, such as destruction, damage or theft, but also the possibility that an item may be seized by the judicial authorities of a state in which it is present at a given time. This risk applies to items loaned from abroad for exhibition, research, and restoration purposes. Applications for the seizure of a loaned object may have diverse sources. First and foremost, they include claims to a particular object lost by an original owner, for example

as the result of theft, war looting, border changes, nationalisation laws, and so forth (Jakubowski 2014, 67). Legal regulations governing the protection of exhibits loaned from abroad will be analysed and evaluated below.

2 The Principles of Object Loaning and Collaboration Among Museums in European Union Countries

In line with Article 167(1) and (2) of the Treaty on the Functioning of the European Union, the EU shall contribute to the flourishing of the cultures of its Member States, while respecting their national and regional diversity and at the same time underlining the importance of the common cultural heritage. The Union's activities are to encourage cooperation among the Member States and, where necessary, to support and complement their actions, *inter alia*, in non-commercial cultural exchange¹.

It should be pointed out that the principles of due diligence and reciprocity are applied in international cooperation among museums. These principles have helped to establish and introduce legal regulations governing the protection of exhibits loaned from abroad. It is assumed, in effect, that museums organising exhibitions and borrowing objects from abroad do not act in breach of ownership titles. The period for submitting claims to loaned items before they are subject to security is a 'safety buffer'. This institution stems from the concern that the provenance of some objects and collections currently held by museums may be unknown for reasons beyond the control of the holding institutions. This lack of knowledge is not due to a lack of interest in the background of their own collections, but rather to past situations in which the museums were unable to obtain proper information. This can potentially jeopardise the organisation and funding of costly international exhibitions (Folga-Januszczyńska 2010, 81).

The ICOM (International Council of Museums) Code of Ethics for Museums states that providing access and temporary exhibitions, both tangible and virtual, should remain consistent with a museum's mission, rules, and objectives. Such activities should not impair the security or condition of collections. Museums should also strive to ensure that information provided when granting access to their collections and at exhibitions is reliable, credible, and respectful of the beliefs or ideas of the groups represented. Museums should also avoid providing access to or otherwise using objects whose origin is

¹ Treaty on the Functioning of the European Union, Rome, 25 March 1957 (OJ 2004, No. 90, item 864/2).

unknown or doubtful, since such practices may be regarded as encouraging illicit trade in cultural property (Waltoś 2009, 52–54).

The principles of loaning objects and museum collaboration in the European Union include, as listed by D. Folga-Januszewska:

1. The principle of trust – proper and reliable information, and the fair application of legal procedures, are the economic, practical, and long-term foundations of cooperation among museums.
2. The principle of security – problems arising from external threats should be addressed jointly, and collaborating museums should apply at least the recommended minimum legal procedures.
3. The principle of insuring loaned items – the insurance values of objects should be reduced to a minimum that still entitles them to guarantees. The aim is to persuade financial authorities to accept a bottom rate from which warranties may be sought.
4. The principle of object valuation – the unreasonable overstatement of object values is reprehensible and disrupts harmonious cooperation and market rules.
5. The principle of inventory and digitalisation – adequate inventorying and digitalisation of collections is a condition of mutual information sharing. Without acceptable standards and systems for browsing, reporting, access, and the transmission of visualisations, cooperation at the required level is not possible.
6. The principle of restoration, principles of object storage and handling, and climate standards – a decision to lend items follows an assessment of climate conditions and the quality of conservation care that the borrowing museum can assure.
7. The principle of preventing works from being seized – the role of legislation in museum cooperation should be, on the one hand, to introduce systems intended to restore ownership in accordance with moral principles and law, and, on the other, to prevent absolutely the seizure of objects where claims are merely financial or political manoeuvres.
8. The principle of copyright and property rights – respect for copyright, and the prevention of fees where institutions have never acquired property rights, must be the overriding principles of collaboration among museums.
9. The principle of research and scientific restoration – this restores a non-commercial dimension to organising exhibitions and shows that are not only activities for the community and young people, education, and media dissemination, but may also become research events, providing basic and specialist knowledge about a subject.

10. The principle of fees for loaning exhibitions, objects, collections – museums do not charge for the mere fact of loaning artefacts. The costs of loaning, documentation, conservation, and administration are specific expenses by museums and should be borne by the party that stands to derive potential benefits from the loan (Folga-Januszewska 2005, 11–13).

3 The Concept and Essence of Museum Immunity

Museum immunity involves the legal protection that one state extends within its territory to an object loaned from another state in the context of a temporary exhibition, in order to secure that object against legal claims of former owners or by those challenging the current ownership title. A claimant may take advantage of the fact an object is temporarily in another country with a different legal system and seek its seizure. The protection afforded by immunity is granted for a specific period, namely, the duration of the exhibition and the time needed for its preparation². P. Gwoździewicz believes that this institution guarantees that an object will be protected against third-party claims for the duration of an exhibition. Such claims may include those brought by former owners who were unlawfully deprived of their property, as well as by creditors seeking to satisfy their claims out of an object's value. The fact that a museum is unable to provide a guarantee an exhibit against court seizure may 'scare' private collectors away from making their objects available to the public at large. Providing a legal guarantee that an exhibited object is free from court seizure is therefore a decisive factor in loan decisions (Gwoździewicz 2011, 140).

As W. Kowalski notes, the institution is controversial, since limiting its effectiveness to the time of an exhibition means, in practice, a temporary restriction on court proceedings for bringing and securing claims. He also points out the individual private interests should be duly balanced against the public interest in making cultural heritage available to the widest possible audience (Kowalski 2008, 157).

In view of the above, two types of the immunities can be distinguished. One covers all objects brought from abroad for the purposes of a given exhibition; the other only applies to works in appropriate listings, sometimes accompanied by relevant documentation and subject to specified procedures. The former is a simple instrument that best serves the interests of museum

2 *Lending to Europe: Recommendations on collection mobility for European museums. Chapter 3.3. Immunity from seizure*, 15. Available at: https://www.ne-mo.org/fileadmin/Dateien/public/topics/Collection_Mobility/Members/Lending_to_Europe.pdf [accessed 8 Aug. 2024].

institutions organising exhibitions, with the law of the State of New York being a good example. In the latter case, it is normally sufficient to submit a list to the competent authorities. The loaned objects are then granted protection. This has been the practice in Belgium, West Germany, and Austria. Under the immunities of this type, the exemption from seizure often becomes effective only some time after the publication of a list, for example, in an official government gazette, as in France and Switzerland. This period is intended to allow any possible claims to objects loaned to an exhibition to be raised. Some systems, including the US federal law and the British law, provide for full provenance research into objects (Kowalski 2018, 308).

The institution was introduced to the Polish legal system by force of the Act Amending Certain Acts Governing the Rules of Access to Certain Professions³. The stated reasons for introducing so-called museum immunity include the economics of law-making, as well as an urgent need to assure the protection and smooth functioning of cultural exchange between Polish and foreign cultural institutions⁴. This contributes to the realisation of the legal norms adumbrated in Article 6 of the Constitution of the Republic of Poland, according to which ‘the Republic of Poland shall provide conditions for the people’s equal access to the products of culture which are the source of the Nation’s identity, continuity and development [...] shall provide assistance to Poles living abroad to maintain their links with the national cultural heritage’⁵.

4 The Conditions of Providing Legal Protection to Items Loaned from Abroad for Temporary Exhibitions

In line with Article 31a(1), legal protection may cover a moveable of historic, artistic, or scientific value loaned from abroad for a temporary exhibition organised in the Republic of Poland⁶. For such legal protection to be available, all of the following six conditions must be met:

3 The Act Amending Certain Acts Governing the Rules of Access to Certain Professions of 5 August 2015 (OJ 2015, item 1505).

4 Statement of reasons for the government draft Act Amending Certain Acts Governing the Rules of Access to Certain Professions. Print 2331 p. I. Available at: <https://www.sejm.gov.pl/sejm7.nsf/druk.xsp?nr=2331> [accessed 8 Aug. 2024].

5 The Constitution of the Republic of Poland of 2 April 1997, OJ 1997, No. 78, item 483.

6 Museum Act of 21 November 1996, the uniform text: OJ 2022, item 385 as amended, Article 31a(1).

1. Importing the objects into Poland is in the public interest – this means that the competent minister should consider the merits of the objects and of the planned exhibition.
2. The objects are not in the territory of Poland – this condition is intended to ensure that the immunity in fact protects items brought from abroad and is not granted after they have been imported into Poland.
3. Importing the objects into Poland is lawful – this is to ensure that immunity is not extended to objects unlawfully exported from the country of their habitual storage. In this connection, the lender should deal with all formalities related to the loan and the importation of the objects to Poland; as a rule, this involves obtaining an export permit in line with applicable legislation. It must therefore be verified whether an object is exported on the basis of an export permit, or the owner's or holder's statement (where a permit is not required) that the export is not subject to a permit. As far as compliance with international law is concerned, items acquired in violation of generally recognised prohibitions against theft or war looting cannot be protected (Gwoździwicz-Matan 2021, 409–422).
4. The objects have not been exported from Poland illegally – this means that immunity does not protect objects exported from Poland in breach of the law. This applies to theft, war losses, and export by owners contrary to export regulations.
5. Organising a temporary exhibition without legal protection would be impossible or would entail costs disproportionate to the cost of organising the exhibition – the condition for legal protection is the impossibility of exhibiting a given object, or of the exhibition in general. Granting the protection entails a legal risk to the Treasury. The applicant should demonstrate that borrowing a given object without legal protection is impossible, or that borrowing without immunity would generate expenditure such that the cost of exhibiting the object would be high in proportion to the cost of the whole exhibition. This is an evaluative condition to be verified on the basis of the information provided in the application.
6. The temporary exhibition will be organised by a cultural institution as defined by the Organisation and Conduct of Cultural Activities Act, or by a museum other than a cultural institution listed by the Minister for Culture and National Heritage by force of Article 5b of the Museum Act⁷ – an application for protection may be submitted by a public or

7 The competent minister for culture and protection of national heritage maintains a list of museums in the Public Information Bulletin. The list contains the following information: name of museum; registered address of museum; full name of the entity or private individual

private museum, or a cultural institution other than a museum, for example an art gallery organising the planned exhibition (Barbasiewicz 2020, 157–158).

It should be pointed out that a moveable subject to legal protection cannot be seized to secure claims in civil or administrative proceedings, enforced in judicial or administrative proceedings, or seized to secure proprietary penalties, proprietary penal remedies, or claims for the redress of damage in criminal proceedings. Decisions to grant legal protection are made by the competent minister for culture and protection of national heritage, upon the request of exhibition organisers. In addition, the minister keeps up-to-date records of moveables subject to such protection. The legal protection of a moveable extends for no longer than twelve months from its import into the territory of Poland (Karcz-Kaczmarek 2020, 527).

5 The Procedure of Covering a Moveable with Legal Protection and the End of Legal Protection

The procedure for granting legal protection to a moveable is laid down in Article 31b of the Museum Act. An exhibition organiser submits an application to the competent minister for culture and protection of national heritage to have a moveable covered by legal protection at least six months before the scheduled import of the moveable into the territory of the Republic of Poland. Where formal defects are found, the authority calls on the applicant to rectify the application within a period of 7 and 30 days from receipt of that request; otherwise, the application will not be considered.

If the application meets the statutory requirements, the competent minister for culture and protection of national heritage publishes its contents on the website of the Public Information Bulletin and sets a deadline by which private individuals, legal person, or organisations without legal personality may submit objections as to whether the moveable specified in the application fulfils the statutory requirements. Such objections may be raised for at least 30 days after publication. If objections are submitted, the competent authority calls on the exhibition organiser to supplement their application within 7 and 30 days of receiving such a request; otherwise, the application will not be considered.

that opened the museum; for a registered museum, the date of its entry in the State Register of Museums. The entity which opened the museum must supply the information within three months from the museum's foundation, or supply information of such modification within one month at the latest.

After these deadlines, the competent minister for culture and protection of national heritage consults a state cultural institution specialising in the museum sector and collection protection on whether the conditions for granting a moveable with legal protection are met. Once the opinion is available, the authority decides whether to grant legal protection to the moveable and publishes the decision in the Public Information Bulletin⁸.

The legal protection of a moveable ends, on the other hand, in three cases:

1. after the expiry of the period for which a moveable is covered by legal protection;
2. on the date the moveable is removed from the Republic of Poland; and
3. where the moveable fails to meet the statutory requirements because it has been imported or exported unlawfully⁹.

In the latter case, the competent minister for culture and protection of national heritage, having consulted a state cultural institution specialising in the museum sector and collection protection, promptly notifies the exhibition organiser that the legal protection of the moveable has come to an end (Gwoździewicz-Matan 2021, 433–434). Information suggesting that objects were imported into Poland unlawfully or exported from Poland unlawfully is to be verified by experts. It appears that an exhibition organiser can still be consulted at the stage at which information undermining the legal status of the objects is being verified, since organisers are often well placed to obtain information on the legal and factual status of objects: they work with lenders, have access to documentation, and may be able to examine the objects (Barbasiewicz 2020, 169–170).

The legal protection ends *ex lege* under Article 31a(3)(3) of the Museum Act, without any further acts of the minister or other public administration authorities and, in particular, without any need to publish the information in the Public Information Bulletin. As a result, the exhibition organiser is deprived of the right to a court hearing. They cannot challenge the end of the protection, or the minister's inaction in this respect. In practice, situations may therefore arise in which the minister's and the organiser's views – for example as to the date on which the protection ends or the reasons for its cessation – differ, and such a dispute will not be heard by an administrative court (Gwoździewicz-Matan 2021, 409–422).

8 OJ 2022, item 385 as amended, Article 31b.

9 OJ 2022, item 385 as amended, Article 31a(3).

6 Warranty for Objects Loaned from Abroad for Exhibitions Held in Poland

In compliance with Article 23 of the Warranties and Guarantees Provided by the Treasury and Certain Legal Entities Act, the Council of Ministers may, at the request of the competent minister for culture and protection of national heritage and on behalf of the Treasury, grant warranties to non-residents covering compensation for the destruction, damage, or theft of uninsured exhibits that they own or lawfully hold, if such exhibits form part of artistic exhibitions organised in the Republic of Poland and their total value exceeds the equivalent of € 500,000. Exhibition organisers apply for such warranties¹⁰.

An application for warranty contains general information about the exhibition organiser, specifies the time and location of the exhibition, and gives reasons for arranging it and for not insuring the exhibits. The application is submitted to the Museum Department of the Ministry for Culture and National Heritage at least six months before the scheduled exhibition date. It must be accompanied by a detailed list of exhibits and their values, a description of the measures and conditions for protecting the exhibits in transit and at the exhibition venue, an opinion from the National Institute of Museums and Protection of Collections on the institution's resources and conditions, and the planned exhibition design¹¹.

It should be stressed that insufficient funds to pay premiums are a major practical reason for refraining from insuring exhibits. For insurance to be meaningful and fulfil its function, the sum insured should not differ from the insurance value, that is, the actual value of the object. The more valuable an exhibit, the higher the sum insured and, consequently, the higher the premium (Gredka 2013, 235–236).

10 The Warranties and Guarantees Provided by the Treasury and Certain Legal Entities Act of 8 May 1997, the uniform text: OJ 2024, item 291 as amended.

11 M. Bogdańska-Krzyżanek, A. Jasione, A. Modrzewska, *Rekomendacje i dobre praktyki w zakresie zarządzania kolekcją w instytucjach kultury*, 38. Available at: <https://polin.pl/system/files/attachments/dobre%20praktyki%202021-BEZ-WCAG%20N.pdf> [accessed 20 Aug. 2024].

7 Conclusion

In conclusion, it should be noted that adherence to the principles governing the loan of objects and cooperation among museums in the European Union enhances international museum exchange. This exchange is also supported by the institution of museum immunity, which provides a legal guarantee protecting exhibits against third-party claims. This analysis of the prevailing legislation suggests, however, that granting exhibition organisers the right to challenge the discontinuation of legal protection of moveables would improve Polish law. Such a step would ultimately help to prevent disputes between the minister and exhibition organisers as to the circumstances and dates on which the protection ends. Reducing the insurance values of loaned objects is also needed, so that more interested parties may benefit from warranties. In addition, the nomenclature connected with the museum immunity should be standardised, since the doctrine exhibits a degree of arbitrariness. In the draft law, the Polish legislator uses the term “security against seizure”, whereas the same institution is referred to as “jurisdictional immunity” in the European Union. As a result, the institution is not readily intelligible to the public.

References

- Barbasiewicz, Adam. “Komentarz do art. 31A”, in *Ustawa o muzeach. Komentarz*, 155–160. Warszawa: C.H. Beck, 2020.
- Barbasiewicz, Adam. “Komentarz do art. 31D”, in *Ustawa o muzeach. Komentarz*, 169–170. Warszawa: C.H. Beck, 2020.
- Folga-Januszewska, Dorota. “Zasady wypożyczenia obiektów i współpracy między muzeami w krajach Unii Europejskiej”. *Muzealnictwo* 46 (2005): 11–13.
- Folga-Januszewska, Dorota. “Zabezpieczenie przed konfiskatą – prawna ochrona dla muzeów organizujących wystawy międzynarodowe”. *Zeszyty Naukowe Uniwersytetu Jagiellońskiego. Opuscula Musealia* 18 (2010): 75–88.
- Gredka, Iwona. “Poręczenia Skarbu Państwa a ubezpieczenia komercyjne – analiza porównawcza”. *Muzealnictwo* 54 (2013): 234–239.
- Gwoździewicz-Matan, Paulina. “Komentarz do art. 31A”, in *Ustawa o muzeach. Komentarz*, ed. by Ziemowit Cieślík, Iwona Gredka-Ligarska, Paulina Gwoździewicz-Matan, et al. Warszawa: Wolters Kluwer, 2021: 409–422.
- Gwoździewicz-Matan, Paulina. “Komentarz do art. 31D”, in *Ustawa o muzeach. Komentarz*, ed. by Ziemowit Cieślík, Iwona Gredka-Ligarska, Paulina Gwoździewicz-Matan, et al. Warszawa: Wolters Kluwer, 2021: 433–434.

- Gwoździewicz, Paulina. "Instytucja immunitetu jurysdykcyjnego w sprawach dotyczących wypożyczeni dzieł sztuki", in *Rynek sztuki. Aspekty prawne*, ed. by Wojciech Kowalski and Katarzyna Zalasńska. Warszawa: Wolters Kluwer, 2011: 139–155.
- Jakubowski, Andrzej. "Prawna ochrona (Immunitet) zagranicznych dóbr kultury. Słów kilka o projekcie Nowej Konwencji Międzynarodowej". *Cenne, Bezcenne i Utracone* 1 (2014): 67–70.
- Karcz-Kaczmarek, Maria. "Działalność kulturalna, muzea i biblioteki, ochrona zabytków", in *Prawo administracyjne materialne*, ed. by Zofia Duniewska, Barbara Jaworska Dębska, Ewa Olejniczak-Szałowska, et al. Warszawa: Wolters Kluwer, 2020: 503–548.
- Kowalski, Wojciech. "Immunitet jurysdykcyjny dzieł sztuki pozyskanych na wystawę z zagranicy", in *Prawo muzeów*, ed. by Józef Włodarski and Kamil Zeidler. Warszawa: Wolters Kluwer, 2008: 153–167.
- Kowalski, Wojciech. "Muzea a ryzyka związane z globalizacją rynku sztuki", *Opuscula Musealia* 25 (2018): 287–310.
- Waltoś, Stanisław. *Kodeks Etyki ICOM dla Muzeów*. Warszawa: Wolters Kluwer, 2009.

The Legal Conditions of Searching for Archaeological Monuments

Piotr Krzyżanowski

Abstract This is another contribution to the discussion on the legal regulation of searching for archaeological monuments. Two significant factors prompt this subject. The first is the recent tenth anniversary of the Historic Monument Protection Act in Poland. The second is the technological progress facilitating access to and thus increasing the popularity of amateur archaeological monument-hunting. This article aims to determine whether the Polish legislator has provided a legal framework for searching for archaeological monuments that accommodates both the duty to protect such monuments and the individual freedom to enjoy cultural assets. I intend to reconstruct and critically analyse the prevailing model of the legal protection of searching for archaeological monuments in Poland. Several research methods are used in this process: the formal-dogmatic method; axiological analysis of law; axiological and argumentative methods; and the (auxiliary) historico-legal method.

Keywords archaeological monument – regional monument conservator's permit – finder's reward

1 Introduction

This article comprises another contribution to the discussion on the legal regulation of searches for archaeological monuments. Two significant factors prompt this subject. The first is the recent tenth anniversary of the Monument Protection Act in Poland¹. The second is the technological progress that has facilitated access to amateur searches for archaeological monuments, thus increasing their popularity. The discovery of forgotten chapters of history, the exploration of past cultures, and, finally, the search for treasures have fascinated people for centuries. Objects that are found often have the status of monuments and, as elements of cultural heritage, are subject to special protection.

It is therefore of paramount importance to provide a legal framework for searching for archaeological monuments that addresses both the duty of their

1 The Historic Monument Protection Act of 23 July 2003 (OJ 2024, item 1292), 'the Protection of Historic Monuments Act'.

protection and every individual's freedom to enjoy cultural assets. This paper aims to determine whether the Polish legislator has fulfilled the duty to establish legal conditions that ensure both values are realised. The issue of monument searching from the perspective of legal regulation has been addressed frequently in the literature. Nevertheless, such publications have focused on selected aspects of searching, such as criminal procedure or the definition and ownership of found objects.

I intend to reconstruct and critically analyse the prevailing model of the legal protection of searches for archaeological monuments in Poland. Several methods are used in this research process. The formal-dogmatic method is employed for most of this study, as it serves to review the prevailing law. An axiological analysis of law is also applied in order to identify the socially important values prioritised by the legislator when constructing the model of legal protection of searching for archaeological monuments in Poland. This is combined with the argumentative method, which presents arguments for the view that certain solutions adopted by the legislator are axiologically justified. The historico-legal method is used to some extent when analysing earlier legislation on the protection of cultural assets.

2 The Definition of 'Archaeological Monument'

An adequate accuracy and clarity will be ensured if this discussion begins with the term 'archaeological monument'. The Protection of Historic Monuments Act contains legal definitions of both 'monument' and 'archaeological monument'. Article 3(1) provides that a monument is a real estate or moveable object, or its parts or ensembles which is man-made or connected to human activity and constitutes testimony to past eras or events and whose preservation is in the public interest owing to its historic, artistic, or scientific value. Specialist literature rightly points out that 'a monument must belong to the sphere of culture, traditionally distinct from the natural world; it must be a work of man or related to human activity' (Zeidler, Zalaszińska 2015, 20).

The legislator has chosen a material approach to defining a monument. A formal definition was used under the former cultural asset protection law. Pursuant to its Article 4, monuments were cultural assets that were: entered in the register of monuments; inventoried by museums or held by libraries (except for materials forming part of the national archival resources, protected under separate regulations); or other objects, if their historic nature was obvious and they were not protected under separate regulations. Under the current law, a historic monument is any object meeting the criteria set

out in Article 3(1) of the Protection of Historic Monuments Act, regardless of whether it is entered in the appropriate registers or records (Kotulski 2011, 20). K. Lenczowska-Soboń notes that entry in the register of historic monuments is merely declaratory and is not a pre-requisite to qualifying an object as a historic monument (Lenczowska-Soboń 2022, 118).

Nor does the condition of an object predetermine its historic nature. The Supreme Administrative Court held in its judgment of 24 January 2024 that the degraded substance of a real property in no way means that it is not a historic monument². In another decision, the Supreme Administrative Court found that Article 6(1)(3) of the PROTECTION OF HISTORIC MONUMENTS ACT directly implies that works of architecture and buildings are subject to protection and care regardless of their condition³. A judgment of the Regional Administrative Court in Gdańsk states that 'the existence of historic value is determined by the preservation of a substance incorporating the core of historic value. The destruction of parts of a monument, where their preservation has no effect on its essence, impairs the historic value but cannot justify removal from the register of monuments'⁴.

The legislator has decided to use a non-exclusive disjunction; for an object to be treated as a historic monument it is sufficient that it possesses one of the three values identified in the provision, namely, historic, artistic, or scientific value. A judgment of the Regional Administrative Court in Warsaw states that historic value is determined by an item's documentary value for certain historic events. Thus, the more significant the historical event documented by a given object, the greater its historic value⁵. This may be supported, in particular, by the following arguments: the object was the site of an important political, public, or scientific function; or it is directly connected with important historical figures, phenomena, or developments (Witwicki 2007, 84). The artistic value of an object is determined by the fact that it contains an element of beauty perceptible to recipients⁶. M. Witwicki argues that in the case of artistic value 'all spatial characteristics of an object and its placement in its surroundings are assessed. These are: situation, formal composition, composition of the interior space; and structure, materials, style or stylistic convention of the whole or individual architectural elements, including decorations, and artistic aspects

2 The Supreme Administrative Court judgment of 24.01.2024, II OSK 1076/21, LEX No. 3693405.

3 Supreme Administrative Court judgment of 6 Feb. 2023, II OSK 2730/21, LEX No. 3514463.

4 Regional Administrative Court in Gdansk judgment of 14 Sept. 2022, II SA/Gd 218/22, LEX No. 3415848.

5 Regional Administrative Court in Warsaw judgment of 6 July 2023, VII SA/Wa 37/23, LEX No. 3607589.

6 Ibidem.

of its relationship with the surroundings' (Witwicki 2007, 86). The scientific value of an object is evidenced by its usefulness to research and impact on scientific development (Lenczowska-Soboń 2022, 120).

A historic monument may additionally demonstrate values other than those listed in the Act, such as patriotic, sacral (religious), utility, or educational values (Zeidler 2009, 50; Witwicki 2007, 90). A judgment of the Regional Administrative Court in Warsaw argues that 'the historic value of the former cemetery as a burial place arises not only from the preservation of its historic, artistic, and scientific values, but also from the presence of human remains and of a burial area'⁷.

Another criterion that must be met by an object to be recognised as a historic monument is the public interest in preserving it (Gwoździewicz-Matan 2015, 43). According to the Regional Administrative Court in Warsaw, public interest is the benefit that preserving a monument, at least in its present condition, may bring to society⁸. J. Pruszyński rightly observes that a historic monument is a confirmation of past human activity that contributes to shaping the identity of a given community through historic, political, and cultural identification (Pruszyński 1996, 9). The Regional Administrative Court in Warsaw accepted that the value of historic monuments is chiefly determined by the fact 'they are carriers of certain meanings (testimonies). This concerns recording and transmitting the memory of people, processes, events, or images represented by these objects in a variety of ways'⁹. Some interpretative doubts may arise from the phrase 'testimonies to past eras or events' in the legal definition of a historic monument. The completion of an event or era is a key criterion for treating something as a historic monument. According to P. Gwoździewicz-Matan, 'an event must therefore be past, even if recent, and the era must be a closed historical period. The definition of historic monument may be described as progressive: the set of objects classed as historic monuments expands as time passes' (Gwoździewicz-Matan 2015, 42).

The foregoing legal definition of a historic monument is an instance of descriptive definition, since the object of protection is defined by reference to its characteristics (Jagielska-Burduk 2011, 88). Specialists rightly point out that the prevailing legal definition of historic monument is approximative, as

7 Regional Administrative Court in Warsaw judgment of 15 May 2019, VII SA/Wa 2432/18, LEX No. 3044126.

8 Regional Administrative Court in Warsaw judgment of 16 Jan. 2019, VII SA/Wa 1076/18, LEX No. 2621675.

9 Regional Administrative Court in Warsaw judgment of 5 April 2018, VII SA/Wa 1661/17, LEX No. 2522576.

the use of vague phrases (historic, artistic, or scientific value) entails the need to apply evaluative criteria (Cherka et al. 2010, 21). The terms will need, however, to be made more specific in the course of applying the law (Ginter and Michalak 2016, 53). Determining that something is a historic monument must therefore be preceded by a process of evaluation (Ruczkowski 2017, 85). The literature stresses that this degree of ambiguity 'is to serve a best-intentioned care for the preservation of national heritage and the protection of all assets and objects worthy of such protection' (Ginter and Michalak 2016, 53).

The Regional Administrative Court in Warsaw stated that an object whose artistic, historic, or scientific value is above average may be regarded as a historic monument. The Court observed that 'only objects should be registered that deserve preservation for their artistic, historic, or scientific value. Such values cannot be assumed in advance, but should follow from expert opinions or studies'¹⁰. The Supreme Administrative Court likewise found that an object distinguished by its artistic, historic, or scientific values when compared to other items may be entered in the register. Entry in the register is the highest regime of legal protection; therefore, assessing a given object requires in-depth specialist knowledge¹¹.

According to Article 3(2) of the Protection of Historic Monuments Act, an immovable historic monument is real estate, part of it, or an ensemble of real estates that constitutes testimony to a past era or event whose preservation is in the public interest owing to its historic, artistic, or scientific value. Under Article 6(1)(1) of the Protection of Historic Monuments Act, immovable historic monuments include cultural landscapes; urban and rural layouts and building ensembles; works of architecture and construction; works of defensive construction; engineering objects, in particular, mines, steelworks, power plants, and other industrial facilities; cemeteries; parks, gardens, and other forms of designed greenery; and sites commemorating historic events or the activities of eminent personages or institutions.

Under Article 3(2) of the Protection of Historic Monuments Act, a moveable historic monument is a moveable object, part of it, or an assembly of moveable objects that constitutes testimony to a past era or event whose preservation is in the public interest owing to its historic, artistic, or scientific value. Under Article 6(1)(2) of the Protection of Historic Monuments Act, moveable historic monuments include works of graphic art, artistic crafts, and applied art; collections of objects gathered and arranged according to the ideas of their

10 Regional Administrative Court in Warsaw judgment of 20 April 2017, VII SA/Wa 1239/16, LEX No. 2360139.

11 Supreme Administrative Court judgment of 12 Jan. 2023, II OSK 2887/21, LEX No. 3480793.

creators; collector coins and historic objects, in particular, militaria, banners, seals, badges, medals, and orders; engineering products, especially equipment, means of transport, machinery, and tools that are evidence of material culture, are characteristic of former or new forms of management, or that document the standards of science and civilisational development; library materials within the meaning of Article 5 of the Libraries Act¹²; musical instruments; works of folk art and crafts and other ethnographic objects; and objects commemorating historic events or the activities of eminent personages or institutions.

When introducing the above definitions, the legislator used terms already defined in the Civil Code¹³, namely, 'object' and 'real estate' (Golat 2004, Article 3). Pursuant to Article 45 in the Civil Code, objects are only material things, while Article 46(1) of the Civil Code treats real estate as parts of the earth's surface that are owned separately (land), as well as buildings fixed to the land or parts of buildings, where they are owned separately under special regulations.

Specialist literature considers the division of historic monuments into immovable and moveable to be well founded. This is necessary because the nature, types, condition, and location of immovable objects typically require quite different regulations from those applicable to moveable historic monuments (Ginter, Michalak 2016, 60).

In the light of Article 3(4) of the Protection of Historic Monuments Act, an archaeological monument is an immovable historic monument that constitutes a surface, underground, or underwater residue of human existence and activity, consisting of cultural layers, including products or parts thereof, or a moveable historic monument that is such a product. The definition of an archaeological monument is very broad, not least because underwater monuments were included in the definition for the first time in Polish law (Kowalski and Pomian 2006, 176). Since an archaeological monument is a qualified form of historic monument, it must also meet all the criteria of a historic monument under Article 3(1) of the Protection of Historic Monuments Act (Trzciński 2010, 19).

In Article 6(1)(3) of the Protection of Historic Monuments Act, the legislator introduces an aggregated definition of an archaeological monument, which supplements the general definition in Article 3(4) of the Protection of Historic Monuments Act, by indicating examples of archaeological monuments subject to legal protection. Under this provision, protection and care extend to

12 The Libraries Act of 27 June 1997 (OJ 2022, item 2393).

13 The Civil Code of 23 April 1964 (OJ 2024, item 1061), 'the Civil Code'.

archaeological monuments, regardless of their condition, including, in particular, field remains of prehistoric and historic settlements, burial grounds, barrows, and traces of economic, religious, and artistic activities. As M. Trzciński notes, 'the semantics applied in the provision clearly shows the legislator was reluctant to enumerate all the various categories or groups of monuments, which would have been difficult, and only wanted to identify their characteristic, typical forms' (Trzciński 2010, 20).

3 The Requirement to Obtain a Regional Monument Conservator's Permit

In accordance with Article 36(1)(12) of the Protection of Historic Monuments Act, searching for hidden or abandoned moveable historic monuments, including archaeological monuments, by means of any electronic, technical, or diving equipment requires a permit from a regional monument conservator. Pursuant to Article 36(2) of the Protection of Historic Monuments Act, permits to search for hidden or abandoned moveable historic monuments, including archaeological monuments, in Polish maritime areas are issued by the director of a maritime office, in consultation with the regional monument conservator competent for the location of that office. Such a permit may lay down conditions to prevent damage to, or destruction of, a monument. A regional monument conservator may also make the permitted actions conditional on the applicant providing, by a specified date, certain information about the activities covered by the permit, by including such a condition in the permit.

In principle, the permits referred to in Article 36(1) of the Protection of Historic Monuments Act are issued upon the request of private individuals or organisations holding legal title to use historic monuments entered in the List of Heritage Treasures or the register, arising from ownership, perpetual usufruct, permanent administration, a limited property right, or an obligation relationship. Under Article 36(1) of the Protection of Historic Monuments Act, however, permits to search for hidden or abandoned moveable historic monuments, including archaeological monuments, may also be issued to private individuals or organisations intending to carry out searches but not holding legal title to use the monuments. Should an owner or property holder refuse their consent to such searching, applicants may rely on the limitations to ownership set out in Article 30 of the Act.

In the light of Article 38(1) of the Protection of Historic Monuments Act, a regional monument conservator, or authorised staff of a regional monument protection office, monitors compliance with, and the application of, regulations

on the protection and care of historic monuments. Under Article 43(1)(3) of the Protection of Historic Monuments Act, the regional monument conservator is required to issue a decision to stop any searches for hidden or abandoned moveable historic monuments, including archaeological monuments, carried out without a permit or otherwise than within scope and conditions set out in that permit.

Under Article 44 of the Protection of Historic Monuments Act, such a decision expires two months after its delivery if, within that time, the conservator fails to issue any of the following decisions: (i) a decision ordering a monument to be restored to its prior condition or a site to be cleaned; (ii) a decision requiring a monument to be brought to the best possible condition, using specified methods, by a set date; (iii) a decision imposing the duty to obtain the regional monument conservator's permit to conduct the blocked search, with an application for that permit to be submitted within seven days after the decision is delivered; (iv) a decision requiring specified steps to bring the search into conformity with the scope and conditions laid down in the permit, and setting a deadline for such steps; or (v) a decision prohibiting the blocked activities. Anyone violating historic monument regulations, or the scope and conditions of a permit, must carry out the measures required by one of the above decisions at their own expense.

Under Article 47(1) of the Protection of Historic Monuments Act, a regional monument conservator may reopen proceedings concerning an issued search permit and then amend or revoke it by decision if new facts or circumstances emerge during the search that may cause damage to, or destruction of, a monument. Under Article 48 of the Protection of Historic Monuments Act, the director of a maritime office, in consultation with the regional monument conservator competent for the location of that office, may decide to stop any search conducted without a permit; may amend or revoke a permit already issued by reopening proceedings if new facts or circumstances emerge during the search that may cause damage to, or destruction of, a monument; or may revoke a permit if the search is carried out in breach of the scope and conditions set out in the permit.

It should also be noted that Article 47a(1) of the Protection of Historic Monuments Act allows the minister for culture and protection of national heritage, after consultation with the Central Conservation Commission, to revoke or amend a search permit *ex officio* if the activities specified in the permit would impair the value of a monument, damage or destroy it, or lead to its improper use. Proceedings to revoke or amend a permit must not be initiated more than two years after the permit becomes final and binding.

4 The Ownership of Archaeological Monuments Discovered or Found in the Course of Searches

The question of ownership of archaeological monuments discovered or found is crucial to the regulation of monument searching. The prevailing view in the literature is that legally they are the property of State Treasury (Wróbel 2023, 60). This is expressly provided for in Article 35(2) of the Protection of Historic Monuments Act, under which archaeological monuments acquired as a result of searches become the property of the State Treasury.

The regional monument conservator determines, by decision, where such monuments are to be stored or deposited, in a museum or another organisation, subject to that entity's consent. They may be transferred there only if the museum or other organisation is able to ensure their permanent storage, inventorying, and appropriate conservation work, and to provide access to the monuments for research purposes. If requested by the museum director, archaeological monuments deposited with a museum may be transferred to its ownership by decision of the regional monument conservator.

Article 33(1) of the Protection of Historic Monuments Act provides that anyone who accidentally finds an object believed to be an archaeological monument must take all available measures to secure it, mark its location, and promptly notify the competent regional monument conservator or, if this is impracticable, the competent village administrator, mayor, or city president. Within three days of receiving such notification, the regional monument conservator is required to inspect the object and the place where it was found, and, if necessary, arrange archaeological investigations. When an object believed to be an archaeological monument is found in Polish marine territories, the competent director of a maritime office must be notified without delay.

Under Article 34(1) of the Protection of Historic Monuments Act, anyone who discovers or accidentally finds an archaeological monument is entitled to a reward, provided that they have complied with the above duties relating to securing the object and informing the competent authority. The Protection of Historic Monuments Act does not explicitly state whether a reward is also due to a person who finds a monument in the course of authorised searches. This is clarified by § 4 of the Minister of Culture and National Heritage's regulation of 2 July 2015 on rewards for finding monuments or archival materials¹⁴. Under that provision, a reward is granted if the finder searched for a monument on

14 The Culture and National Heritage Minister's ruling on rewards for finding monuments or archive materials of 2 July 2015 (OJ, item 979).

the basis of, and in accordance with the conditions of, a regional monument conservator's permit. The regulation provides for pecuniary rewards and diplomas. Under § 3(1)–(2), a pecuniary reward must not exceed thirty times the average wage for the preceding calendar year as announced by the National Office for Statistics, and must not be lower than one tenth of the material value of the monument or archive material.

5 Penal-Law Protection of Searches

Searching for monuments without a permit, or in breach of a permit's conditions, has been penalised since the adoption of the Protection of Historic Monuments Act, under which it constituted an offence. Following the amendment that entered into force on 1 January 2018¹⁵, it became a criminal offence. Under the current Article 109c of the Protection of Historic Monuments Act, anyone who searches for hidden or abandoned moveable historic monuments, including archaeological monuments, using any electronic, technical, and diving equipment without a permit or in breach of a permit's conditions, is liable to a fine, restriction of liberty, or imprisonment for up to two years.

In the opinion of M. Kulik, what is protected here is the inviolability of a monument and its preservation in an unimpaired condition; property rights, or property in general, are not protected (Kulik 2010, LEX). A number of commentators take the view that the protected interest is 'the condition of hidden or abandoned monuments, which may be damaged or destroyed as a result of inexperienced searches using specialist equipment' (Bojarski and Radecki 2018, Legalis). A. Wróbel argues that what is protected is 'the legality of searches for hidden or abandoned monuments' (Wróbel 2023, 63).

Searching without a required permit is a general offence that can be committed by anybody. Only someone who has secured a permit can commit the offence of conducting a search in breach of a permit's terms and conditions (Janikowski 2021, 136). Authors agree that this illegal act is an intentional misdemeanour, having been committed with intent, whether direct or oblique (Gadecki et al. 2019, 59). Searching for hidden or abandoned historic monuments without a permit or in breach of a permit's conditions, including by means of electronic, technical, or diving equipment, is among the elements of

15 The Act Amending the Monument Protection Act and the Nature Protection Act of 24 November 2017 (OJ 2018, item 10).

this illicit act. B. Gadecki believes it can be assumed *a contrario* that searching for monuments without any specialist equipment does not require a permit and should not be penalised (Gadecki 2015, 96). J. Janikowski rightly notes that 'searching for monuments in Poland is not absolutely forbidden by law, only formally restricted by the requirement to hold an appropriate permit' (Janikowski 2021, 136). Specialist equipment includes sonars, metal detectors, neodymium magnets, frame detectors, thermographic cameras, and georadars (Zalasińska 2020, Legalis). The phrase 'hidden or abandoned monuments' shows that the legislator intends to apply this regulation to any situation 'where a monument is sought, since it is occasionally impossible to establish whether a particular object has been abandoned, lost, or concealed by its owner' (Gadecki et al. 2019, 60). According to M. Kulik, 'a hidden monument has been placed where its finding is difficult, in relation to which steps have been taken that hinder determining its location. Finally, a hidden monument is one in relation to which steps have been taken intended to conceal its very existence or possession by a given person' (Kulik 2010, LEX). J. Janikowski points out that 'a monument is hidden if its location is unknown' (Janikowski 2021, 137). Kulik states that an abandoned monument 'has been left in order to get rid of its ownership and, it seems, any monument not under control of a person now but under their control before. [...] A lost monument can be assumed to be an abandoned monument' (Kulik 2010, LEX).

This crime is formal; therefore, it is the offender's conduct, not its effects, that is penalised (Wróbel 2023, 61). It has been noted that, 'in terms of its structure, this is an offence of abstract endangerment. The legislator assumes that searching without a permit or in breach of its conditions may endanger the condition of sought or abandoned monuments, without however requiring that endangerment to be demonstrated. Accordingly, the absence of a permit or action contrary to its conditions is sufficient satisfy the elements of Article 109c [...] regardless of whether a monument has been damaged or destroyed, or whether such damage or destruction was even imminent' (Bojarski and Radecki 2018, Legalis).

If a monument is damaged or destroyed in the course of searching without a permit or in breach of its conditions, the offence under Article 108(1) of the Protection of Historic Monuments Act will be cumulatively qualified alongside the offence under Article 109c of the Protection of Historic Monuments Act. Under Article 108(1) of the Protection of Historic Monuments Act, anyone who destroys or damages a monument is liable to imprisonment for between six months and eight years.

6 Conclusion

To conclude, the prevailing model of the legal protection of searches for archaeological monuments in Poland rests on four pillars: the definition of the concept of an archaeological monument; the requirement of securing a search permit; regulation of the ownership of found objects; and the penal-law protection of searches. The legislator has adopted proper methods and maintained adequate precision when introducing the legal definitions of historic monuments in general, of moveable and immovable historic monuments, and, finally, of archaeological monuments.

Since archaeological monuments continue to be found or discovered, *de lege ferenda* Article 6(1)(3) of the Protection of Historic Monuments Act should be amended to identify further examples of archaeological monuments. It would also be commendable to specify certain possible administrative-law consequences of searching without a required permit from a regional monument conservator, and of searching outside the scope of, or in breach of the conditions set out in, such a permit. Clarifying which entities may apply for such permits, and on what terms, could likewise be proposed *de lege ferenda* at the statutory level rather than by way of a regulation.

With regard to the ownership of found monuments and finder's rewards, again an act of parliament, rather than a regulation, should specify what reward is due to an entity that finds a monument while conducting searches for which it has obtained a permit. Finally, regulating searches through a single provision in the context of penal-law protection is questionable. It seems reasonable also to regulate acts such as failures to notify the finding of a monument, as well as concealment or sale of a found monument.

The Act of 13 July 2023 Amending the Monument Protection Act¹⁶ should also be mentioned. It liberalises the law and modifies the model for the legal protection of searches. The changes have prompted a range of disputes. Concerns have been raised, for example, by the Council for the Protection of Archaeological Heritage in discussions with the Minister of Culture and National Heritage, and by the Scientific Board of the Institute of Archaeology and Ethnology of the Polish Academy of Sciences. Increasingly, calls are being made to amend the law again before it takes effect. Notably, the amended act has already been amended once¹⁷, with its commencement date postponed from 1 May 2024 to 1 May 2025. Given space constraints and the strong

¹⁶ OJ item 1904 as amended.

¹⁷ The Act Amending the Amended Monument Protection Act of 12 April 2024, OJ item 647.

likelihood of further amendments, the author has decided not to address this amendment here, but to prepare a separate study once the amending Act enters into force and its final wording is known.

References

- Bojarski, Marek and Radecki, Wojciech, in *System Prawa Karnego*, vol. 11, *Szczególne dziedziny prawa karnego. Prawo karne wojskowe, skarbowe i pozakodeksowe*. ed. by M. Bojarski. Warszawa: Wydawnictwo C.H.Beck, 2018.
- Cherka, Maksymilian, Antoniak, Patrycja, Elżanowski, Filip and Wąsowski, Krzysztof. *Ustawa o ochronie zabytków i opiece nad zabytkami. Komentarz*. Warszawa: Wydawnictwo Wolters Kluwer Polska, 2010.
- Gadecki, Bartłomiej. "Ochrona podwodnego dziedzictwa kultury". *Państwo i Prawo*, no. 9 (2015): 90–99.
- Gadecki, Bartłomiej, Jakubowski, Olgierd, Zeidler, Kamil and Trzeciński, Maciej. *Praktyczne aspekty zwalczania przestępczości przeciwko dziedzictwu kulturowemu*. Gdańsk: Wydawnictwo Uniwersytetu Gdańskiego, 2019.
- Ginter, Artur, and Michalak, Anna. *Ustawa o ochronie zabytków i opiece nad zabytkami. Komentarz*. Warszawa: Wydawnictwo Wolters Kluwer Polska, 2016.
- Golat, Rafał. *Ustawa o ochronie zabytków i opiece nad zabytkami. Komentarz*. Kraków: Kantor Wydawniczy Zakamycze, 2004.
- Gwoździwicz-Matan, Paulina. *Umowa użyczenia muzealium w prawie prywatnym*. Warszawa: Wydawnictwo Wolters Kluwer Polska, 2015.
- Jagielska-Burduk, Alicja. *Zabytek ruchomy*. Warszawa: Wydawnictwo Wolters Kluwer Polska, 2011.
- Janikowski, Jarosław. "Przestępstwo poszukiwania zabytków ruchomych bez pozwolenia lub wbrew jego warunkom". *Studia Prawnoustrojowe*, no. 2 (2021): 133–144.
- Kotulski, Mariusz. "Problematyka ochrony zabytków w planowaniu przestrzennym". *Administracja: teoria, dydaktyka, praktyka*, no. 2 (2011): 5–25.
- Kowalski, Wojciech and Pomian, Iwona. "Ochrona podwodnych obiektów archeologicznych", in *Prawnokarna ochrona dziedzictwa kultury. Materiały z konferencji, Gdańsk, 30 maja – 1 czerwca 2005 r.*, ed. by J. Kaczmarek. Kraków: Kantor Wydawniczy Zakamycze, 2006: 49–69.
- Kulik, Marek. *Komentarz do przepisów karnych ustawy o ochronie zabytków i opiece nad zabytkami*. Warszawa: Wydawnictwo Wolters Kluwer Polska, 2010.
- Kurzępa, Bolesław and Kurzępa-Czopek, Elżbieta. "Nielegalne poszukiwania zabytków". *Prokuratura i Prawo*, no. 9 (2011): 143–152.
- Lenczowska-Soboń, Katarzyna. *Przestępstwo zniszczenia lub uszkodzenia zabytku*. Warszawa: Wolters Kluwer Polska, 2022.

- Pruszyński, Jan. "Stan i potrzeby prawnej ochrony zabytków w Polsce". *Przegląd Legislacyjny*, no. 9 (1996): 7–21.
- Pruszyński, Jan. *Dziedzictwo kultury Polski. Jego straty i ochrona prawna*. Kraków: Kantor Wydawniczy Zakamycze, 2001.
- Ruczkowski, Piotr. "Aksjologia tworzenia i stosowania administracyjnego prawa rzeczowego". *Przegląd Prawa Publicznego*, no. 7–8 (2017): 82–90.
- Trzciński, Maciej. "Przestępczość przeciwko zabytkom". *Prokuratura i Prawo*, no. 6 (2011): 36–52.
- Trzciński, Maciej. "Uwagi o ochronie zabytków na marginesie wyroku Sądu Rejonowego w Jeleniej Górze z dnia 1 grudnia 2014 r. (sygn. akt II K 348/14)". *Zeszyty Naukowe Sądownictwa Administracyjnego*, no. 3 (2015): 75–84.
- Trzciński, Maciej. *Przestępczość przeciwko zabytkom archeologicznym. Problematyka prawno-kryminalistyczna*. Warszawa: Wydawnictwo Wolters Kluwer Polska, 2010.
- Witwicki, Michał Tadeusz. "Kryteria oceny wartości zabytkowej obiektów architektury jako podstawa wpisu do rejestru zabytków". *Ochrona zabytków*, no. 1 (2007): 77–98.
- Wróbel, Adam. "Nielegalne poszukiwanie zabytków – w perspektywie znamion przestępstwa z art. 109c ustawy o ochronie zabytków i opiece nad zabytkami". *Przegląd Prawa Publicznego*, no. 10 (2023): 57–72.
- Zeidler, Kamil. *Prawo ochrony dziedzictwa kultury*. Warszawa: Wydawnictwo Oficyna, 2007.
- Zeidler, Kamil and Złasińska, Katarzyna. *Wykład prawa ochrony zabytków*. Gdańsk: Wydawnictwo Uniwersytetu Gdańskiego, 2015.

The Penal-Law Protection of Historic Monuments in Poland – An Analysis of Selected Aspects

Agnieszka Łozińska-Piekarska

Abstract The penal-law protection of historic monuments in Poland is not a particularly popular topic, although the significance of historic monuments for national heritage and for the identity and history of Poles is considerable. This paper is intended to help initiate a discussion of the current regulations, as well as the scope for and direction of changes that would enhance the standard of legal protection of historic monuments. A review of police statistics will demonstrate the scale of the phenomenon of crimes against historic monuments, while comparisons with regulations in other countries will suggest some legal solutions that have not yet been applied. The protection of cultural heritage, undoubtedly including historic monuments, is guaranteed by the supreme national legal act – the Polish Constitution in its Article 5. Thus, this subject matter deserves closer scrutiny.

Keywords historic monuments – protection – cultural heritage

1 Introduction

Cultural heritage is a testimony to the past and to human achievement; it is an integral part of national and collective identity (Durek 2022, 61). The penal protection of historic monuments is one aspect of the protection of cultural heritage (Trzeciński 2011, 37). The losses in Poland resulting from crimes against historic monuments are substantial, given the scientific, historic, and often financial value of such monuments.

Although crimes against historic monuments may seem uncommon, counteracting them is of paramount importance from the viewpoint of preserving history, national heritage, and identity for future generations. As E. Jurgielewicz-Delegacz observes, ‘crimes against cultural assets are difficult to detect, and the losses they cause, difficult to estimate (due to their unique artistic and historic value), all the more so as most exist in a single example’ (Jurgielewicz-Delegacz 2019, 142). For this reason, the penal-law protection of historic monuments merits particular attention and analysis, as this may improve their protection.

The system of penal-law protection of historic monuments in Poland, based on the Penal Code¹ together with the Act on the Protection and Care of Historic Monuments², is not equal to contemporary challenges. Reforms are needed to ensure more effective protection of cultural assets of special significance, and to highlight their value as fundamental elements of national heritage. This is the central argument of this study.

The paper aims to review the regulations concerning the protection of historic monuments in Poland, with particular attention to the effectiveness of combating crime against them and its impact on local communities and national heritage. Due to space constraints, only selected aspects will be discussed. The changes suggested here are intended to curb crimes against historic monuments, enhance the awareness of Poles of such crimes, and secure the material evidence of the Polish nation's history.

A range of methods is used. Comparative legal analysis helps to identify and assess possible amendments to the current regulations. The review and interpretation of police statistics focus on offences against historic monuments and set their numbers against overall crime figures. Legal functionalism, drawing on an analysis of court decisions, helps to clarify how historic monument protection law is enforced in practice and where interpretative difficulties arise. Taken together, these methods support a comprehensive assessment of the impact of offences affecting historic monuments on Polish cultural heritage, history, and identity. The findings, in turn, provide a basis for specific proposals aimed at strengthening the protection of historic monuments, in particular by adapting regulations to current needs and raising public awareness in Poland.

2 The Prevailing Regulations

The protection of cultural heritage, including the historic monuments discussed here, is guaranteed by Article 5 of the Polish Constitution. This provision states: 'The Republic of Poland shall safeguard the independence and integrity of its territory and ensure the freedoms and rights of persons and citizens, the security of the citizens, safeguard the national heritage and shall ensure the protection of the natural environment pursuant to the principles of

¹ The Penal Code of 6 June 1997 (OJ 2024, item 17); 'the Penal Code'.

² The Act on the Protection and Care of Historic Monuments of 23 July 2003 (OJ 2024, item 1292); 'the Protection of Historic Monuments Act'.

sustainable development’³. The Supreme Court expressed the following view in its judgment of 12 December 1997: ‘Polish law distinguishes a separate class of legally protected interests known as “national heritage”, whose protection has the status of one of the four fundamental values in the Polish legal system. Accordingly, all authorities of the Republic of Poland are obliged to interpret and apply legal provisions so as to ensure the effective protection of this category of assets and values’⁴.

In the Polish context, the penal-law protection of historic monuments is governed by both the Penal Code and the Act on the Protection and Care of Historic Monuments. Accordingly, the Polish model of historic monument protection is partly based on the Penal Code (Bojarski, Radecki, 2006, 22). The protection of historic monuments – or more precisely, cultural assets – was introduced into the Penal Code only in 1997; neither the 1932⁵ nor the 1969 Codes⁶ adopted comparable solutions. Recognising the need to subject bring such protection within the scope of the Code was certainly a step in the right direction. It should be stressed, however, that the earlier lack of provisions directly addressing historic monuments did not mean they were left entirely unprotected. For example, property laws applied in cases of monuments being destroyed.

The current Penal Code does not address the protection of historic monuments directly, nor does it define the concept of a historic monument. Instead, it contains provisions concerning culture assets in both general and specific senses. Several key provisions should be noted, including Article 125 on attacks against cultural assets, Article 126 § 2 defining forms of unlawful use of protective markings for cultural assets, and Article 278 on the seizure of property or cultural assets in occupied territories. Article 294 § 2, which provides for aggravated forms of certain types of offences, also deserves attention. Articles 278 and 294 appear in the chapter ‘Crimes against property’, while Articles 125 and 126 fall under ‘Crimes against peace, humanity, and war crimes’. This dispersion

3 Article 5 of the Polish Constitution. Note the Constitutional Court points out – in the statement of reasons for its judgment of 8 Oct. 2007, K 20/07, OTK-A 2007, No. 9, item 10 – that the legislator adopts a broad notion of ‘safeguarding’ to include any and all forms of state activity in Article 5 of the Polish Constitution. This means the state, when discharging its duty of protecting national heritage, has a variety of means at its disposal. However, their selection in a specific situation must consider the constitutional restraints of state power arising from the guaranteed civic rights.

4 Supreme Court judgment of 12 December 1997, III RN 74/97, OSNAPiUS 1998, No. 14, item 413.

5 The President of Poland ordinance, Penal Code of 11 July 1932, OJ No. 60, item 571 as amended, repealed as of 13 May 1983.

6 Penal Code of 19 April 1969, OJ No. 13, item 94 as amended, repealed as of 1 September 1998.

supports the argument for bringing these offences together – ideally in a single chapter dealing with historic monuments or cultural assets. The literature occasionally proposes creating a separate chapter on historic monuments in the Penal Code (Radecki 2012, 31–33), which would incorporate the provisions of the Act on the Protection and Care of Historic Monuments.

The absence of definitions of cultural assets – whether in a general or special sense – in the Penal Code is arguable the most serious shortcoming of the current framework. The literature notes that Article 294 § 2 is not self-sufficient, as it does not define ‘assets of special significance’ (Jurgielewicz-Delegacz 2019, 146). Some authors, including M. Trzciński, go further and regard this provision as infringing a fundamental principle of penal law, namely, *nullum crimen sine lege certa* (Trzciński 2010, 66). This is therefore a major issue that needs to be addressed.

To avoid the interpretative difficulties outlined above, the definition from the Convention for the Protection of Cultural Property in the Event of Armed Conflict, signed at The Hague in 1954⁷, should be relied on when analysing acts qualified as the foregoing crimes. It defines cultural assets as:

- a) moveable or immovable assets of a great importance to the cultural heritage of a nation (e.g. architectural, artistic, or historic monuments; archaeological sites; works of art; manuscripts; books),
- b) buildings whose principal and actual purpose is the storage or display of moveable cultural assets (e.g., museums; libraries; archival repositories),
- c) centres encompassing substantial quantities of cultural assets (so-called historic centres containing assets described in (a) and (b)) (Prażmowska 2019, 303).

Cultural assets of particular significance should be unique and exceptional. Their special nature may also be signalled by their inclusion in the World Heritage List under the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage, adopted in Paris on 16 November 1972 and ratified by Poland⁸. Introducing definitions of both concepts directly into the Penal Code could be a good idea.

In principle, the penal-law protection of historic monuments is governed by Chapter 11 of the Act on the Protection and Care of Historic Monuments

7 The Convention for the Protection of Cultural Property in the Event of Armed Conflict, signed in The Hague on 14 May 1954, OJ 1957, No. 46, item 212 as amended.

8 The Convention Concerning the Protection of the World Cultural and Natural Heritage, accepted in Paris on 16 November 1972 by the General Conference of the United Nations Educational, Scientific and Cultural Organization in its seventeenth session, OJ 1976, No. 32, item 190.

of 23 July 2003 (Protection of Historic Monuments Act), entitled 'Penal provisions', which regulates both crimes and offences relating to the protection of historic monuments⁹. Chapter 10a, 'Administrative fines', was added by the Act Amending the Act on the Protection and Care of Historic Monuments and Certain Other Acts of 22 June 2017¹⁰. Article 1 of that Act determines the scope, object, and forms of historic monument protection and care. The Act also governs the preparation of national programmes for the protection and care of historic monuments, the financing of conservation, restoration, and construction work on historic monuments, and the organisation of historic monument protection authorities. The legislator gives the impression of seeking to underline the role of historic monuments in shaping the awareness and identity of communities; this is why the duties of administrative authorities and their cooperation with the public are so important.

It should be noted, however, that not all historic monuments or cultural assets are protected under the Protection of Historic Monuments Act; it does not cover, for example, museum collections, which are subject to the Museums Act of 21 November 1996¹¹. The Protection of Historic Monuments Act also does not cover matters governed by the Libraries Act¹² or the Polish Language Act¹³.

The glossary of terms in the Protection of Historic Monuments Act, in particular the definition of historic monument, is worth mentioning. Pursuant to Article 3(1), a historic monument is 'a real estate, its part, or real estate ensembles that are man-made and connected with human activity, testimonies to past eras, or occurrences whose preservation is in the public interest owing to their historic, artistic, or scientific value' (Drela 2006, 42)¹⁴. Thus, the following aspects are crucial to regarding an object as a historic monument: its creation by humans; the fact that it is evidence of a past era or event; and that its preservation is in the public interest due to its value to national heritage

9 In line with the Supreme Administrative Court decision of 18 June 2014, II OSK 1521/14, LEX No. 1767407, the provisions of the Act on the Protection and Care of Historic Monuments of 23 July 2003 indicate parties to the relationships it governs are unequal and these relationships are in the public domain, in particular, the organisational duties of public authorities. In effect, they are not part of civil law, but of civil administrative law.

10 The Act Amending the Act on the Protection and Care of Historic Monuments and Certain Other Acts of 22 June 2017 (OJ item 1595).

11 The Museums Act of 21 November 1996 (OJ 2022, item 385).

12 The Libraries Act of 27 June 1997 (OJ 2022, item 2393).

13 The Polish Language Act of 7 October 1999 (OJ 2024, item 1556).

14 The doctrine stresses that, although intellectual elements may matter in the legal context of historical monuments, the notion of historical monuments refers solely to material objects. For a work of art to be treated as a historical monument, it must have a physical medium by means of which it is expressed.

(Pruszyński 2001, 91–102). The Act distinguishes between moveable, immovable, and archaeological historic monuments.

The Protection of Historic Monuments Act also sets out the scope of historic monument protection, noting, among other things, that state authorities must take steps to prevent risks that may impair the value of historic monuments and to counteract the theft, loss, or illicit export of historic monuments. Thus, the protection of historic monuments is a public duty (Zalasiński 2020).

A register of historic monuments is maintained as part of their protection. In accordance with the Supreme Administrative Court's opinion of 13 September 2023, an object 'displaying characteristics that substantiate its special protection for its unique historic, artistic, and scientific value' must be entered in the register of historic monuments¹⁵. The register is the oldest and most basic form of historic monument protection in Poland (Zalasiński and Brudnicki 2021, 8). It was established by a decree of the Minister of Religious Denominations and Public Enlightenment on 17 July 1928¹⁶. At present, the register is based on the provisions of the Protection of Historic Monuments Act and the Culture and National Heritage Minister's regulation of 26 May 2011 on the maintenance of the register of historic monuments, national, regional, and local records of historic monuments, and the national list of historic monuments stolen or exported against the law¹⁷.

The penal-law protection of historic monuments is governed by regulations on administrative crimes, offences, and torts liable to administrative fines. Chapter 11 of the Protection of Historic Monuments Act classifies, among other offences, the destruction of historic monuments¹⁸, the illicit importation of cultural assets from non-EU Member States into the territory of Poland¹⁹, the export of historic monuments without the required permits²⁰, forgery

15 Supreme Administrative Court judgment of 13 Sept. 2023, II OSK 3066/2022, *Legalis* No. 3064922.

16 OJ 1928, No. 76, item 675.

17 The Culture and National Heritage Minister's ruling on maintenance of the historical monuments register, national, regional, and local records of historical monuments, and the national list of historical monuments stolen or exported against the law (OJ 2021, item 56).

18 Article 108 of the Protection of Historical Monuments Act. As declared by the Supreme Court in its judgment of 24 June 1993, III KRN 98/93, OSNKW 1993, No. 9–10, item 64, p. 46, 'the destruction of a historical monument consists in such damage that restoration to the previous condition is utterly unfeasible'.

19 Article 108a of the Protection of Historical Monuments Act. In the case of such a crime, a historical monument may be forfeited even if owned by the offender.

20 Article 109 of the Protection of Historical Monuments Act.

(Szczekala 2012, 114)²¹ and the sale of forged historic monuments (Drela 2012, 327–335)²², and the searching for historic monuments without the required permits (Grajewski 2019, 34; Hardy, 2016, 214–237)²³. Further provisions apply to allowing destruction²⁴, the destruction of a culture park²⁵, failure to notify a find²⁶, and failure to secure it²⁷. The latter two regulations also classify the placing of advertisements on historic monuments without a permit²⁸ and failure to keep accounting records²⁹. It should be noted that decisions in cases involving acts classified under Articles 110–118 are based on the Petty Offences Procedure Code³⁰. In addition, the Protection of Historic Monuments Act provides for the option of ordering damages payable to the National Fund for the Protection of Historic Monuments or to a specific public objective connected to monument care. Such a solution seems appropriate and enhances the protection and care of historic monuments.

It needs to be stressed that the concepts of the protection and care of historic monuments are clearly distinguished in Poland. This is similar to the conservation theories prevailing in the United Kingdom or Germany. There, protection is identified with legal actions and care with factual actions (Durek 2022, 62–63).

21 Article 109a of the Protection of Historical Monuments Act. A special good, namely, the reliability of historical monuments and trust in their trade, is protected with this provision.

22 Article 109b of the Protection of Historical Monuments Act. It must be noted that some disputes involving trade in forged artefacts are resolved in civil proceedings and are not always reflected in penal statistics.

23 Article 109c of the Protection of Historical Monuments Act. Note that searching for historical monuments without a permit has been classified as a crime since 1 January 2018, rather than as an offence as previously. This change is connected to a serious issue spreading across Poland: illegal searches for historic monuments by the so-called detectorists. The problem is not merely domestic, but European or even global.

24 Article 110 of the Protection of Historical Monuments Act. An offence of negligence can only be committed by a historic monument owner or holder. The Regional Administrative Court judgment of 14 February 2019, VII SA/Wa 917/18, OSG 2019, No. 8, item 54, p. 64, states: 'punishing for failure to properly secure a historic monument stems from the assumption that a historic monument is not only a private asset of its owners, who are therefore bound to preserve it in the best possible condition for the general good'.

25 Article 112 of the Protection of Historical Monuments Act.

26 Article 115 of the Protection of Historical Monuments Act.

27 Article 116 of the Protection of Historical Monuments Act.

28 Article 118 of the Protection of Historical Monuments Act. If placing advertisements on historical monuments involves their destruction, Article 108 of the Protection of Historical Monuments Act shall apply as appropriate.

29 Article 119a of the Protection of Historical Monuments Act.

30 The Petty Offences Procedure Code of 24 April 2001 (OJ 2024, item 977).

3 Crimes Against Historic Monuments – Scale

Crimes affect both immovable and moveable historic monuments. They take a variety of forms and are directed against diverse cultural assets. The destruction of property (historic monuments) (Krawczyk 2015), theft, and export of paintings and works of art are among the most common crimes against historic monuments. In formal terms, crimes against historic monuments, cultural assets, or cultural heritage do not have legal definitions. Specialist literature nonetheless defines the concept in two ways: as crimes classified under the Protection of Historic Monuments Act, or as crimes against chattels and real property meeting the definition of historic monuments under Article 3 of the Protection of Historic Monuments Act (Jakubowski 2021, 178).

Estimating the scale of crimes against historic monuments is unusually difficult and must rely on a range of sources and information. The inclusion of a crime in police statistics, without reference to the financial or other value of a historic monument, fails to do justice to the scale of the phenomenon. Each historic monument has a different value; moreover, in today's information society, misleading fake news and unreliable information, as well as selective details or one-sided accounts, are very common (Jakubowski 2021, 186).

Based on figures collected by M. Piorunek of the National Police Headquarters, it is possible to estimate the numbers of crimes related to historic monuments and cultural assets. The data below summarise crimes against cultural assets codified by the Penal Code or the Protection of Historic Monuments Act. There were 604 such crimes in 2020, 600 in 2021, and 689 in 2022³¹. Their number rose clearly in 2022. The scale may nonetheless be greater, as not all such crimes are detected and reported to the prosecution authorities.

Assigning these figures to the Penal Code and the Protection of Historic Monuments Act, 460 crimes prosecuted under the Penal Code were reported in 2022, 370 in 2021, and 407 in 2020³². The year 2021 saw the fewest crimes against cultural assets, whereas their share expanded markedly in 2022.

As the distribution of historic monuments varies across regions, some researchers have focused on case studies limited to particular areas. A Supreme Audit Office report shows that the number of historic monuments varies across regions, from 1,900 in Świętokrzyskie to 8,900 in Lower Silesia³³. These

31 M. Piorunek, *Przestępczość wymierzona w dobra kultury w Polsce w latach 2020–2022*. Available at: https://cennebezczenne.pl/wp-content/uploads/2023/12/CBU_12.23_52-57.pdf [accessed 14 Nov. 2024].

32 Ibidem.

33 Available at: <https://www.nik.gov.pl/plik/id,25591,vp,28358.pdf> [accessed 14 Nov. 2024].

differences relate to the size of the areas, historical conditions, and the specific characteristics of particular regions. They also often arise from local conservation policies adopted in a given region³⁴.

A single region with a considerable number of historic monuments has been studied by E. Durek, for instance, who focused on Lesser Poland (Durek 2022, 62–63). A total of 306 crimes classified under the Protection of Historic Monuments Act were committed there between 2017 and 2021, with merely 13 per cent detected – corroborating the problem, mentioned above in this paper, of illustrating the phenomenon of crimes against historic monuments in its entirety. There were 46 crimes in 2017, 40 involving the destruction of or damage to historic monuments. There were 41 in 2018, including 36 connected with destruction or damage; out of 47 in 2019, 43 were classified as destruction or damage. Numbers remained similar from 2017 to 2019, but then rose sharply in 2020, when as many as 95 crimes were recorded, including 90 cases of destruction or damage. The number of crimes against historic monuments in Lesser Poland fell a little in 2021 to 60 (Durek 2022, 66). Crimes against cultural assets in Lesser Poland under the Penal Code totalled 14 in 2017; 5 in 2018; 5 in 2019; 4 in 2020; and just 2 in 2021. This research confirms that destruction or damage are the most common crimes affecting historic monuments.

To illustrate the scale of the phenomena, general figures for Poland in 2017–2021 are listed below. There were 753,963 crimes in 2017; 768,049 in 2018; 796,557 in 2019; and 765,408 in 2020. The number increased noticeably in 2021, totalling 820,846³⁵.

It has already been noted that detection is the key issue in counteracting crimes against historic monuments. This is due to several conditions, which may be identified as follows. First, penal proceedings must frequently be instituted that require specialist knowledge to establish that historic monuments or cultural assets are at stake, which in turn allows for the correct classification of the crime (Karaźniewicz 2018, 128). The dispersion of legal regulations and their varying terminology are another issue.

It must be said crimes against historic monuments are a dangerous and pathological phenomenon that requires both legislative action and an improved efficiency on the part of the relevant organisations and authorities.

34 Raport o stanie zachowania zabytków nieruchomych w Polsce. Zabytki wpisane do rejestru zabytków (księgi rejestru A i C), Narodowy Instytut Dziedzictwa, 2017, p. 74. Available at: <https://nid.pl/pl/Wydawnictwa/inne%20wydawnictwa/RAPORT%20O%20STANIE%20ZACHOWANIA%20ZABYTEK%C3%93W%20NIERUCHOMYCH.pdf> [accessed 14 Nov. 2024].

35 Statistics of total crimes, available at: <https://statystyka.policja.pl/st/przestepstwa-ogolem/121940,Przestepstwa-ogolem.html> [accessed 14 Nov. 2024].

4 Proposals for Changes to Improve the Legal Protection of Historic Monuments

Establishing lines of changes to the Polish system of historic monument protection must begin with a brief identification of the relevant determinants. These can be divided into external and internal factors. The former relate to Poland's membership in the European Union and its legal consequences, such as binding international multilateral treaties or the decisions of the European Courts of Human Rights and of Justice (Dobosz 2011, 111). The internal reasons for the need to modify the system of historic monument protection derive primarily from the Protection of Historic Monuments Act, which is obsolete and out of step with the current realities. For example, it is not fully suited to new types of crime or new technologies that may arise in connection with crimes against cultural assets. This is also related to low public awareness of both the scale of crimes against historic monuments and their effects on Polish cultural and historic heritage. Therefore, P. Dobosz's postulate of forming a team of experts on historic monuments and cultural heritage, together with lawyers, to prepare assumptions for amendments to the existing legal solutions, is worth noting (Dobosz 2011, 117).

Defining cultural assets in their general and special meanings in the Penal Code would undoubtedly help to standardise decisions concerning crimes involving historic monuments or cultural assets. This would streamline decision-making practice and eliminate potential inconsistencies arising from the absence of explicit definitions in the Penal Code. Replicating the definition from the Convention cited above seems clearly appropriate.

Introducing a chapter dedicated to the protection of historic monuments into the Penal Code is another *de lege ferenda* postulate. Such a solution is supported by a range of factors, including the fact that nearly all legal solutions relating to this protection are currently outside the Code, which undoubtedly reduces public awareness of, and standards for, historic monument protection. Where such acts are regulated outside the Code, the public may perceive them as less harmful – an assessment that cannot be accepted and is challenged in this article. Such a solution is advocated, among others, by E. Jurgielewicz-Delegacz (Jurgielewicz-Delegacz 2019, 150–151). The opponents of the idea, however, argue that amendments to the Penal Code must be approached cautiously, as its capacity is limited and references to other statutes are risky. These issues have been disputed since the legislative work on the 1997 Penal Code. Personally, I am in favour of incorporating regulations on the protection of cultural assets and historic monuments in a single chapter of the Penal Code.

Non-legal actions that can help to enhance the legal protection of historic monuments include preventive and educational efforts to improve public

knowledge and awareness of the value of cultural assets and historic monuments, as well as of their legal protection. Actions such as training on the legal regulations governing historic monument protection, or the sharing of experience and knowledge by various authorities under relevant agreements, are examples of preventive measures that deserve to be promoted. Projects run by the police preventive services that involve education on counteracting crime against historic monuments, or cooperation with authorities or institutions responsible for storing such monuments, provide further examples. Such cooperation often relies on preparing and implementing adequate fire-safety or anti-burglar measures. Historic monument marking campaigns are another preventive measure (Szymczyk 2021, 204). Social campaigns and a stronger emphasis on education about the protection and care of historic monuments, particularly among younger people, can improve the security of historic monuments and reduce the incidence of crimes against them. Authorities charged with their protection can also be involved in wider actions aimed at raising awareness of the status and importance of historic monuments and coordinating measures for their effective protection or broadly defined crime prevention. Such collaboration may also involve specialist measures, such as improving methods of historic monument protection (Szymczyk 2021, 198).

More intensive cooperation between police teams counteracting crimes against national heritage and the public, the museum community, conservators, and collectors is a major element of preventive undertakings (Jurgielewicz-Delgacz 2019, 151). Closer cooperation may enhance the protection of historic monuments and cultural assets and foster general awareness of their value to Polish history and the nation. To ensure the proper and effective discharge of duties related to the protection of cultural heritage and historic monuments, an all-round approach is required, with collaboration among a range of entities, authorities, organisations, and institutions. In practice, conservation services commonly work with prosecution agencies. This cooperation is occasionally governed by mutual agreements and at other times remains informal (Szymczyk 2021, 192). Two agreements are particularly important to this collaboration: an agreement between the General Historic Monuments Conservator and the Police Commander-in-Chief on cooperation in preventing and counteracting crimes against historic monuments and other cultural assets, dated 8 February 2018³⁶, and an agreement between the Minister for Culture and National Heritage, the Head of National Tax Administration, and the Police and Border Guard Commanders-in-Chief on cooperation in counteracting export or import of historic monuments, dated 7 February 2020

36 Published in *Meandry ochrony dziedzictwa kultury. Aspekty prawne i kryminalistyczne*, pp. 111–115, Warszawa 2019.

(Szymczyk 2021, 196). These agreements envisage a series of actions such as the sharing of knowledge and experience between the authorities, the prevention of the loss or destruction of historic monuments, and the recovery of lost historic monuments. They may also involve coordinating other authorities or improving methods of historic monument protection. The objectives of closer cooperation or more robust prevention can be pursued through a variety of measures, such as consultations prior to executive steps, ongoing contacts and information-sharing, control activities ordered by authorised bodies (for instance, the Police), or assistance with the transportation of historic monuments (Szymczyk 2021, 198). These are only some examples of cooperation between conservation and prosecution authorities that are worth highlighting. They certainly deserve approval and financial support in order to expand the territorial scope and frequency of actions undertaken by these authorities. Combining the knowledge of conservation authorities with the skills, tools, and capacities available to prosecution authorities may substantially contribute to reducing the scale of crime against historic monuments.

It seems reasonable, therefore, to postulate an overarching legal regulation of the principles and rules of cooperation between prosecution agencies and conservation services, which often play key roles in rescuing historic monuments. It should be borne in mind that it is the commitment and close collaboration of services and institutions that ensure effective protection of cultural assets and historic monuments.

As part of such cooperation, regular information-sharing among authorities and institutions at both national and international levels appears to be of particular significance (Czaplicka 2016, 13–18). Some crimes involve bringing historic monuments out of, or into, the Republic of Poland. Up-to-date information on wanted, lost, or stolen historic monuments is essential to improving collaboration among the authorities and organisations responsible for protecting historic monuments.

This discussion should conclude by addressing state-of-the-art technology, and the challenges and opportunities it may introduce for the protection of historic monuments. Owing to space constraints, this analysis is restricted to digitalisation – which I consider a key tool that can contribute to enhanced protection of national heritage – and to identifying certain databases used in the protection of historic monuments.

Digitalisation helps to create permanent, three-dimensional digital documentation of historic monuments' appearance in case they are destroyed. It can also assist in decision-making concerning maintenance or repairs. This is a tool that may encourage young people, students, and experienced

researchers alike to investigate historic monuments and learn about history. The virtual representation of national heritage and media digitalisation foster social promotion and cultural education (Affelt 2011, 158). Digitalisation also makes cultural content accessible to those unable to see it in person, including people with disabilities. It is therefore a valuable instrument that should find widespread uses in promotion of, and education about, historic monuments. Increasing international collaboration provides further evidence of the need to take advantage of modern technologies in the protection of historic monuments. The tripartite cooperation of Poland, Lithuania, and Ukraine, under which one million euros have been allocated to the digitalisation of Ukrainian culture monuments, may serve as an example (Polkowska 2023, 168). Actions of this kind, against the background of current events causing the destruction of multiple historic monuments in Ukraine, appear indispensable. Databases –for example, national lists of historic monuments stolen or exported against the law – are another important tool. Such a list is maintained by the General Monument Conservator. It stores information about lost historic monuments to support actions intended to recover them. A range of authorities, such as Regional Monument Conservators, the Police, the Border Guard, or museum staff, are obliged to report any information about lost historic monuments immediately after their loss is discovered for the purposes of the list. The database is commonly used to search for historic monuments lost as a result of criminal activity and as a source of information about the number of lost historic monuments for researchers and others interested in the subject (Jakubowski 2021, 189).

5 Conclusion

This analysis shows the system of the penal-law protection of historic monuments in Poland requires comprehensive reforms addressing legal, educational, and organisational aspects.

It can be concluded the national legislator has failed to define a policy for the protection of cultural assets or, more narrowly, historic monuments. The regulations governing the limits of penalisation are inconsistent, vague, and dispersed across a number of legal acts, which reduces their effectiveness and public awareness of their existence and role. It seems that, by introducing administrative fines to the Protection of Historic Monuments Act, the legislator signals a negative stance on expanding strictly penal protection of historic monuments and the relevant regulations. I believe this is not a good solution.

It should be said, by way of summary, that effective protection of historic monuments requires an all-round approach, including both preventative actions and due enforcement of the currently applicable laws. The difficulties of counteracting crimes against historic monuments doubtless depend on the stage at which they are disclosed, their correct legal classification, and the detection of offenders. Thus, most problems, as well as opportunities for guaranteeing and enhancing protection, arise at the pre-court stage of proceedings (Karaźniewicz, 2018, 125–126).

Raising the awareness of the Polish public – both of the definition and recognisability of historic monuments and the extent of penal liability for violations – is also crucial. Greater awareness of the value of cultural heritage can be fostered through social campaigns and more intensive educational work among the young. State-of-the-art technologies, including the opportunities offered by digitalisation as a modern method of protecting historic monuments for future generations, are useful as well.

It must be also remembered Poland is a Member of the European Union. Domestic legislation must therefore be adapted to European standards. Regulations on the protection of historic monuments in other Member States deserve closer attention, and new regulations should be considered that would, for example, expand the competences of historic monument conservators or prosecution agencies.

Although the police statistics indicate that crimes against historic monuments are not widespread, the special role that historic monuments play in particular communities must always be borne in mind. Their protection therefore requires closer collaboration between prosecution agencies, international cooperation, and cooperation with conservators and local communities. It is also reasonable to expand the possibilities for shared use of databases on the protection of historic monuments – for example, lists of stolen historic monuments – by a range of authorities. Access to such databases, as well as ensuring that they are kept up to date, clearly enhances the capabilities of prosecution agencies and other cooperating authorities. This protection, and especially the preservation of material historic evidence, expresses respect for culture and history, for the past of our nation, as well as care for its future. Beyond doubt, historic monuments play a key role in shaping the identity of Polish society, which makes their protection all the more important.

The introduction of the solutions suggested here may become a milestone in building a system of historic monuments protection suited to contemporary challenges, and one that would meet both present needs and the expectations of future generations. Only in this way can Polish cultural heritage be adequately secured as a foundation of national identity and a legacy to the world.

References

- Affelt, Waldemar. "Dziedzictwo transformowane: od autentycznych wrażeń do wirtualnej nudy", in *System ochrony zabytków w Polsce – analiza, diagnoza, propozycje*, ed. by Bogusława Szmygina. Lublin-Warszawa: Drukarnia ALF-GRAF, 2011: 7–16.
- Bojarski, Marek and Radecki, Wojciech. "Ochrona zabytków w polskim prawie karnym. Stan aktualny i propozycje de lege ferenda", in *Prawnokarna ochrona dziedzictwa kultury. Materiały z konferencji*, Gdańsk, 30 May–1 June 2005, ed. by Janusz Kaczmarek. Kraków: Kantor Wydawniczy Zakamycze, 2006: 61–77.
- Czaplicka, Katarzyna. "Przestępstwa przeciwko dziedzictwu kulturalnemu w statystykach policyjnych. Sposoby i kierunki ochrony w świetle inicjatyw międzynarodowych", in *Przestępstwa przeciwko dziedzictwu kulturalnemu. Diagnoza, zapobieganie, zwalczanie*, ed. by Maciej Trzeciński and Olgierd Jakubowski. Wrocław: Katedra Kryminalistyki Wydziału Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego, 2016: 94–98.
- Dobosz, Piotr. "Kierunki zmian w polskim systemie ochrony zabytków", in *System ochrony zabytków w Polsce – analiza, diagnoza, propozycje*, ed. by Bogusława Szmygina. Lublin-Warszawa: Drukarnia ALF-GRAF, 2011: 111–117.
- Drela, Monika. "Odpowiedzialność antykwariusza za sprzedaż fałszywego dzieła sztuki", in *Problematyka autentyczności dzieł sztuki na polskim rynku sztuki. Teoria–praktyka–prawo*. Warszawa, 2012: 107–125.
- Drela, Monika. *Własność zabytków*. Warszawa: C.H. Beck, 2006.
- Durek, Ewa. "Przestępstwa przeciwko zabytkom na terenie województwa małopolskiego – studium przypadku", *Annales Universitatis Paedagogicae Cracoviensis, Studia Politologica*, no. 28 (2022): 61–70.
- Grajewski, Adam. "Negatywny wpływ przestępczości przeciwko zabytkom na wyniki współcześnie prowadzonych badań archeologicznych i prac ekshumacyjnych", in *Meandry ochrony dziedzictwa kultury. Aspekty prawnekarne i kryminalistyczne*, ed. by Marcin Sabaciński and Maciej Trzeciński, Narodowy Instytut Dziedzictwa. Warszawa: Narodowy Instytut Dziedzictwa, 2019: 31–39.
- Hardy, Samuel. "'Black archaeology' in Eastern Europe: Metal detecting, illicit trafficking of cultural objects and 'legal nihilism' in Belarus, Poland, Russia and Ukraine", *Public Archaeology*, vol. 15, no. 4 (2016): 214–237.
- Jakubowski, Olgierd. "Przestępstwa przeciwko zabytkom – charakterystyka problemu (materiały szkoleniowe)", in *Ochrona zabytków – aspekty materialnoprawne i procesowe*, ed. by Katarzyna Zalaszińska. Warszawa: KSAP, 2021: 178–191.
- Jurgielewicz-Delegacz, Emilia. "Wybrane aspekty prawnokarnej ochrony zabytków na podstawie Kodeksu Karnego z 1997 r.", *Studia Prawnoustrojowe* no. 43 (2019): 141–154.
- Karaźniewicz, Justyna. "Rola policji w zwalczaniu przestępczości przeciwko dobrom kultury", *Przegląd Policyjny*, vol. 4, no. 132 (2018): 125–143.

- Krawczyk, Ryszard. *Niszczenie zabytków nieruchomości w Polsce. Analiza prawna, kryminologiczna i kryminalistyczna*. Kraków: Wydawnictwo JAK, 2015.
- Prażmowska, Karolina. "Sprawa Al Mahdiego przed Międzynarodowym Trybunałem Karnym: przełomowy wyrok czy stracona szansa?", *Studia Prawnicze KUL*, no. 2 (2019): 299–326.
- Pruszyński, Jan. 2001. *Dziedzictwo kultury Polski. Jego straty i ochrona prawna*. Kraków: Kantor Wydawniczy Zakamycze, 2001.
- Radecki, Wojciech. "Ochrona zabytków w polskim, czeskim i słowackim prawie karnym", *Prokuratura i Prawo*, no. 4 (2012): 31–33.
- Szczekała, Agnieszka. *Falszerstwa dzieł sztuki. Zagadnienia prawnokarne*. Warszawa: Wolters Kluwer, 2012.
- Szymczyk, Agnieszka. "Współpraca służb konserwatorskich z organami ścigania", in *Ochrona zabytków – aspekty materialnoprawne i procesowe*, ed. by Katarzyna Zielińska. Warszawa: KSAP, 2021: 197–207.
- Trzciński, Maciej. "Przestępstwa przeciwko zabytkom", *Prokuratura i Prawo*, no. 6 (2011): 36–52.
- Trzciński, Maciej. *Przestępstwa przeciwko zabytkom archeologicznym. Problematyka prawno-kryminalistyczna*. Warszawa: Wolters Kluwer, 2010.
- Zalasińska, Katarzyna. *Ustawa o ochronie zabytków i opiece nad zabytkami. Komentarz*. Warszawa: C.H. Beck, 2020.
- Zalasińska, Katarzyna and Brudnicki, Jacek. "Rejestr zabytków – postępowanie w przedmiocie wpisu do rejestru i skutki objęcia ochroną prawną", in *Ochrona zabytków – aspekty materialnoprawne i procesowe*, ed. by Katarzyna Zalasińska. Warszawa: KSAP, 2021: 6–25.

The Penal-Law Protection of Historic Monuments at the Time of Poland's Partitions

Bartłomiej Składanek

Abstract Legal regulations concerning the protection of historic monuments in the Polish territories during the partitions are analysed, with particular focus on penal laws prevailing in Austria, Prussia, and Russia. Differences in the partitioning powers' approaches to the protection of Polish cultural heritage, as well as and steps taken both by the partitioning powers and Polish society to protect historic monuments, will be discussed. The penal protection of historic monuments was derived from laws concerning the protection of property. It is my intention to show how regulations on liability for the destruction of things affected the development of historic monument protection in the Polish lands.

Keywords monuments – criminal law – annexation – protection of cultural heritage

1 Introduction

The period of the Partitions of Poland beginning in the late eighteenth-century – when the Polish territories were divided among the three powers of Russia, Prussia, and Austria – brought huge political, societal, and cultural changes. Each power imposed a law of their own, with significant effects on the protection of cultural heritage. The former, pre-Partition Polish law, did not contain regulations concerning the protection of historic monuments, though postulates advocating the need for legal protection had been advanced. During the Partitions, regulations connected with the protection and care of historic monuments developed in a haphazard manner. Three different legal systems applied in the lands of the former Poland. The partitioning powers failed to introduce any standard regulations on the protection of historic monuments; what is more, they showed little interest in protecting Polish culture or establishing legal instruments to that end. Austria was, to some extent, an exception, and its regulations inspired the first Polish legal act concerning the protection of historic monuments (Rymaszewski 2005, 154).

To preserve their national identity, Poles themselves initiated actions to protect historic monuments. Their key objective was to establish a system enabling the taking stock of, and the description of, these objects. Social organisations

also emerged that focused on the care of cultural heritage. Owing to the difficult political circumstances, however, their efforts were largely limited to postulates, as specific solutions could not be implemented (Lenczowska-Soboń 2022, 25).

2 Legal Regulations Concerning the Protection of Historic Monuments During the Partitions

During the Partitions, classifying something as a historic monument chiefly relied on two criteria: its 'historicity' and recognised artistic value. This narrow approach mainly comprised large buildings like castles, palaces, or cathedrals. The legal provisions applicable in the Polish territories during the Partitions varied and depended on the codes of the partitioning powers: the *Theresiana*¹ and *Josephina*² (in the Austrian partition), the *Landrecht*³ (in the Prussian areas), and the *Sobornoye Ulozheniye*⁴ (in the Russian partition). These codes were inconsistent and based on case-by-case approaches (Borkowska-Bagińska 2010, 131).

The penal regulations prevailing at the time did not provide for any special liability for destroying historic monuments; however, they were not entirely without protection, as this was afforded by laws protecting property. In effect, the concept of the historic monument was defined in penal regulations, and historic monuments were treated as objects (Demetrykiewicz 1885, 6).

When reviewing the provisions concerning damage to, or destruction of, historic monuments in the legal codes prevailing in the Polish lands during the Partitions, it is useful to consider the general rules of criminal liability for the destruction of property. Crimes involving damage to or destruction of objects were among the first to be governed under the legal systems of the time (Lipska 2017, 43). Although a distinct offence of damage to a historic monument did not exist, regulations concerning property destruction frequently listed objects (most often buildings) that could be regarded as historic monuments from the perspective of contemporary law (Lenczowska-Soboń 2022, 27).

1 Available at: <https://archive.org/details/ConstitutioCriminalisTheresiana-1768> [accessed 10 Sept. 2024].

2 Available at: https://archive.org/details/bub_gb_ocrdXAAAACAAJ/page/n17/mode/2up [accessed 10 Sept. 2024].

3 Available at: <https://archive.org/details/dlibra.bibliotekaelblaska.pl.35285.283422469/page/1/mode/1up> [accessed 10 Sept. 2024].

4 Available at: <https://www.hist.msu.ru/ER/Etext/1649.htm> [accessed 10 Sept. 2024].

An examination of the penal laws of the time shows that the areas of the Austrian Partition enjoyed the greatest autonomy with regard to the protection of historic monuments. It was there that the first regulations in this respect were introduced. They played a pivotal role in the later development of legislation concerning the protection of cultural heritage, including penal regulations.

3 The Legal Protection of Historic Monuments in the Austrian Partition

The first legal acts on the protection of historic monuments, including the Court Chancellery Decree of 28 December 1818, restricted the export of objects of historic value from Austria. The prohibition extended to such items as 'paintings, statues, antiquities, collections of collector coins and engravings, rare manuscripts, codes, incunabula, and other items of art and culture whose possession brought honour and glory to the state, provided they were by artists no longer alive' (Demetrykiewicz 1886, 5). Two crucial elements were later indicated in definitions of historic monuments: the groups of items considered as such and the characteristics these items had to exhibit (Grzybowski 1982, 296).

Another important aspect of the Austrian legislation was the regulations concerning the description and stock-taking of historic monuments. A Senate ordinance on an inventory of historic objects was issued as early as 1820. The Ministry for Religious Denominations and Education was established as part of the central government administration in 1848 and was charged, among other things, with the care of the arts and historic monuments (Sznapiak 2016, 9).

As of 31 December 1850, an imperial decision introduced legal regulations that included the protection of historic structures. The Central Commission for the Study and Protection of Works of Art and Historic Artefacts was established to enforce them, with statutes approved in 1853. The Commission's duties involved advice, opinions, and applications relating to the protection and conservation of historic monuments. In 1873, the body was renamed the Central Commission for the Study and Protection of Historic Monuments, an advisory body to the Ministry for Religious Denominations and Education in Vienna. Its activities extended across Austria, with appointed conservators acting as its representatives responsible for the protection of historic monuments (Ziejka 2009, 375).

Historic monuments supervised by the Commission were divided into three main groups: prehistoric objects and classic ancient art, including Greek and Roman; architectural objects, sculpture, paintings, and drawings from the

Middle Ages and later, up to the eighteenth century; and historic monuments of any kind, including written and archival materials, dating until the end of the eighteenth century. These regulations neither included nor referred to any penal provisions. W. Demetrykiewicz stresses that 'the conservation authorities in Austria were powerless, and orders or prohibitions concerning the protection of historic monuments remained on paper', since penal provisions directly applicable to the protection were absent, which forced recourse to other regulations that could be effectively enforced given adequate commitment and initiative (Demetrykiewicz 1886, 20).

Four penal laws were gradually introduced to the lands of the Austrian Partition. The first was an act issued by Emperor Joseph II, generally known as the *Josephina*⁵, which entered into force in 1787. Another major regulation was the Penal Act for West Galicia, effective from 1 January 1797, which served as the foundation for a penal code prevailing throughout the empire, known as the *Book of Laws Against Felonies and Grave Police Crimes* of 1803, popularly referred to as the *Franciscana*.

The *Franciscana* Code consisted of two books: the first concerned felonies, the second grave police offences. Compared with earlier laws, the Code expanded the provisions on crimes against property⁶. Arson as a special category of felonies was listed in § 51(15), and discussed at more length in chapter XXI, §§ 147–150. The Code contained a wide range of provisions concerning arson. Under § 147, a person who took intentional steps to set fire to another person's property was liable even if the fire failed to break out or caused no damage. Another provision stipulated harsher penalties in the case of additional circumstances, such as serious damage (§ 148(e)). Two further provisions related to arsons in one's own real property. Other property regulations concerned theft, robbery, seizure, and fraud (Lenczowska-Soboń 2022, 30).

A Code distinguishing between felonies, crimes, and offences was another important normative act, issued in 1852⁷. Many consider it a modified version of the earlier *Franciscana*. Its Chapter VI envisaged certain special types of felonies, including violent assault against property, described in § 57(10) as 'a public violation through malicious damage to objects'. Part 32 of the same paragraph also defined arson as a felony (Grzybowski 1982, 447). Malicious

5 The *Josephina* penalised crimes against property as well as other civil rights, including forgery, theft, robbery, arson, and bigamy (Sygit 2007, 13)

6 For instance, the following crimes were punishable in part II: § 76 (destruction of water structures), § 133–137 (misconduct in construction work), and § 184–209 (liability for the destruction of assets), including fires caused by construction-related professionals such as chimney sweeps or bricklaying apprentices (Sójka-Zielińska 2022, 279).

7 The Penal Act of 27 May 1852 I.117 OJ: including all its amending Austrian and Polish laws and supplementary acts, Warsaw 1929.

damage to another's property was defined as damage that actually occurred or was intended to occur, to a minimum value of 200 gulden⁸, or if the act could have caused serious risk to a large part of another person's property⁹. Penalties ranged from six months to one year of hard imprisonment in the case of material loss only; if the damage was associated with aggravated risk or greater malignancy, one to five years of hard imprisonment applied¹⁰. The equivalent provision in part II of the Code was § 468, which stated that 'malicious damage to another's property, other than a felony under § 85 and § 89, shall be treated as an offence and subject to detention for one day to one month'.¹¹

A greater degree of damage was another factor affecting the severity of the penalty. In such cases, the offender could even be sentenced to life imprisonment with hard labour¹². The Code addressed arson in § 166, defining it as a felony committed by a person who took steps to set fire to another's property, even if the fire ultimately did not break out or caused no damage. Setting fire to one's own property was also penalised under §§ 168–170. Damage to burial plots, the opening of graves, the removal of or offences against dead bodies, and theft from graves were classified as offences (§ 278(h)). Section 306 extended penal liability to malicious damage to burial plots, the unlawful opening of graves, and the removal of human bodies or parts thereof. Detention from one to six months was prescribed for such acts. Provisions on causing structures to collapse were also relevant to the protection of historic monuments (§§ 381–383)¹³. Austrian penal law emphasised the protection of public security, both of property and of persons, treating crimes such as those under § 85 as the felonies of public violence. The 1852 Code remained in force in Galicia until 1932 (Lesiński and Rozwadowski 2007, 181).

4 Legal Protection of Historic Monuments in the Prussian Partition

No penal regulations directly relating to the protection of historic monuments were introduced in the Prussian Partition, either. Protection was instead governed solely by administrative rules, introduced in 1844 and later amended in 1903, 1905, 1906, and 1907, when an act on the protection of landscapes

8 § 85(a) of the Act dated 27 May 1852.

9 § 85(b) of the Act dated 27 May 1852.

10 § 86 of the Act dated 27 May 1852.

11 § 468 of the Act dated 27 May 1852.

12 § 86 of the Act dated 27 May 1852.

13 § 381–383 of the Austrian penal law of 27 May 1852. These provisions were in force until 1928.

surrounding historic monuments was issued. These regulations focused on the monuments' surroundings, but did not provide for any penal sanctions (Wojciechowski, 4).

The office of the General Conservator of Historic Monuments was founded in 1843 as a state administrative authority charged with the protection of historic monuments. This administrative protection extended only to state-owned objects; other historic monuments did not benefit from this support. Particular attention was given to former fortifications such as defensive walls, bastilles, and city gates. Their demolition was prohibited by a royal decree of 20 June 1830, initially for military and political reasons, and later also for conservation reasons (Demetrykiewicz 1885, 51).

The government took stock of historic monuments in the Prussian Partition; however, objects located in the former Polish lands were often ignored in the process. These inventories nonetheless represented a major effort towards the legal protection of historic monuments in the Prussian Partition. The omission of historic monuments in the Polish territories can be seen as a positive development, since – as noted by J. Pruszyński – the prevailing regulations there tended to facilitate the destruction rather than the protection of historic monuments (Pruszyński 1989, 61). W. Demetrykiewicz takes a different view, arguing that conditions in the Prussian Partition were more conducive to the protection of historic monuments than in the other Partitions (Demetrykiewicz 1885, 49).

The earlier Polish law was repealed in 1721; the First East Prussian *Landrecht* was introduced to the Prussian Partition as early as 1772. Parts of the 1794 Second *Landrecht* were introduced later; this was a case-based act comprising as many as 1,577 paragraphs. Section 1488 of the Code provided a general definition of damage to another person's object, while subsequent provisions addressed specific circumstances resulting in the destruction of, or damage to, someone else's property. In Prussia, care for historic monuments relied on §§ 33, 35, 38, and 71–72 of the *Landrecht*. The Code also contained penal regulations on the protection of property, such as § 509, in Chapter IX, which stated that 'no one shall damage or harm another's property'. In addition, §§ 210 and 211 regulated damage to various objects serving public purposes, thereby affording them legal protection (Lenczowska-Soboń 2022, 40–41).

In response to social change and the development of legal thought, an attempt was made to thoroughly reform Prussian penal law, resulting in the Prussian Penal Code of 1851¹⁴. It consisted of two parts: the first concerned

14 *Strafgesetzbuch für die Preussischen Staaten*, 1851, no. 10, pp. 129–224.

punishments for crimes and offences, while the second regulated special cases and the rules for punishing them. The provisions on the protection of public buildings (§§ 215–236) deserve particular attention. This protection extended to objects serving public purposes, both secular and sacred, as well as to defensive structures such as city walls, bastilles, and gates, and to welfare and community buildings. Repairs and refurbishments had to be consulted with the Head Department of Construction (Opaska 2010, 206). Chapter 26 of the Code concerned damage to property. Section 281 addressed damage in general, while the subsequent regulations related to more serious damage to property (§ 282) and to public buildings (§ 283). The Code clearly distinguished degrees of damage and provided for corresponding punishments (Lenczowska-Soboń 2022, 42).

As penal law needed to be standardised following German unification, the General German Penal Code was introduced in 1871. It was divided into preliminary provisions and two main parts. The first set out the general principles of punishment for felonies, crimes, and offences, while the second concerned specific acts and their prosecution. Section 125 classified offences against public order, including the organisation of unlawful assemblies, violence against persons, theft, and the destruction of property (Sygit 2007, 143).

Chapter XIX of the 1871 General German Penal Code 1 provided for a penalisation of crimes against property; § 304, which related to the protection of historic monuments, deserves special attention. It stipulated:

Whoever, intentionally and unlawfully, damages or destroys objects of worship of a religious association or things devoted to God's service, or tombs, public monuments, works of art, science, or industry in public collections or exhibited publicly, or objects serving public purposes or decorating public highways, squares, or plantations, shall be imprisoned for up to three years or fined up to 1,500 marks.

This provision also applied to attempts to commit such offences. Courts could additionally order the loss of civic rights as an optional ancillary penalty (Frycz 1975, 12). Other provisions on the general protection of property in the 1871 Code are also worth noting, as they afforded more extensive legal protection to objects of particular cultural or public significance, as for example:

- 1) § 243(3) provided for imprisonment with hard labour for up to ten years for theft committed by 'breaking concealments', denoting particularly serious burglaries in which secured property was violated.
- 2) § 303 applied to property damage and read: 'Whoever, intentionally and unlawfully, damages or destroys another's property shall be imprisoned

for up to two years or fined up to 1,000 marks'. This provision also applied to attempts to commit such crimes. It should be stressed this was an offence prosecuted only on the basis of the victim's complaint (Makowski 1923, 392).

The 1871 Code remained in force in Poland until 1932. Early twentieth-century legal doctrine assumed that the offence of property damage covered both physical damage to an object and interference that impaired its usefulness, even if no visible damage occurred. Specialist literature notes that the Russian and Austrian codes placed greater emphasis on the legal and economic aspects of the protected interest, treating the offence as damage to property or assets. The German code, by contrast, used the expression 'damage to another person's thing', thereby emphasising the physical object itself. Legal protection covered both moveable and immovable items, and anything with physical, economic, or legal characteristics could be damaged. All three codes were detailed and case-based (Lesiński 2007, 37).

Hungarian 1878 penal law applied in Spiš and Orava until 1922, when it was replaced by the Austrian penal code as a result of political and legal transformations in the region aimed at standardising the legal system after the end of the Partitions.

5 Legal Protection of Historic Monuments in the Russian Partition

The concept of historic monument was formally introduced in Russia in Peter I's decree of 1722 concerning the legal protection of specified historic monuments. A further decree, issued two years later, introduced legal restrictions on searches for archaeological historic monuments. A code known as the *Sobornoye Ulozheniye* remained in force in the Russian Empire from 1649 until the early nineteenth century¹⁵. A new collection of laws was issued in 1825 and supplemented in 1832. Its volumes X and XV contained both substantive and procedural penal regulations; however, these were already obsolete and out of step with the Empire's nineteenth-century penal policy (Dobosz 2015, 68).

A Punishment Code was introduced in Congress Poland in 1818¹⁶, based on the French 1810 Penal Code and Austria's *Franciscana* Code. It provided

15 The Code provided capital punishment for setting fire to a farm or manor (vol. X, crimes under Articles 226, 227, and 228); setting fire to a town by a traitor was an aggravated form of the crime (Kwiatkowska, 62).

16 *The Journal of Laws of Congress Poland*, vol. V, pp. 1–292. Available at: <http://pbc.biaman.pl/dlibra/docmetadata?id=4270> [accessed 10 Sept. 2024].

penalties for the destruction of property, with Articles 143 and 144 referring directly to arson. Under Article 143, arson constituted a felony if it resulted in consequences such as: 'If a fire burns down a town, village, farm, depot, land or water crafts workshop and the loss is so great that the arsonist is unable to compensate' (part 1(b)); or 'If a fire set at night breaks out, threatening the life of one or more persons and jeopardising buildings and settlements exposed to the risk of destruction, causing grievous bodily harm and substantial damage to structures' (part 1(c)). The Code envisaged capital punishment for these felonies. Article 144 covered cases of actual fires causing substantial damage to assets; in such cases, a minimum of ten to twenty years of hard imprisonment applied. Articles 383 and 384 addressed further aspects of arson (Lenczowska-Soboń 2022, 33–34)

Arson was considered one of the most serious crimes, and thus as many as five provisions of the Code classified it as a felony. The penalties were severe. The Code also provided for other offences, such as the destruction of, or damage to, monuments, cemeteries, tombs, statues, and national decorations. Article 363¹⁷ imposed detention and fines for such acts, intended to protect public places of memory and national heritage against vandalism (Śliwowski 1958, 123).

The Punishment Code of Congress Poland was replaced by a Code of Capital and Corrective Punishments, which remained in force from 1847 to 1876. It initially applied in an abridged version and was introduced in full following a revision of the Russian code in 1866. Highly casuistic, it contained more than a thousand types of crimes, divided into three main groups: crimes against the government, against the community, and against private individuals. With regard to crimes against individual property, the Code regulated the destruction of property in detail. For instance, Article 246 in its 1847 version provided penalties for 'the violation of a grave in order to strip dead bodies or abuse a dead person'. As W. Miklaszewski notes, Article 246 did not apply to digging up graves or burial mounds in search of ancient monuments. The following regulation, Article 247, concerned the destruction of tombstones and imposed penal liability 'for destroying or damaging tombstones or external grave markers if motivated by hatred against the dead or their families'. In addition to defining the object of the act, liability depended on a specific intention. Aside from punishment, the perpetrator was required to recompense the damage caused (Miklaszewski 1877, 311).

The same legal act also protected other objects, such as public monuments erected with the consent of, or by order of, the government; boundary pillars

17 *The Journal of Laws of Congress Poland*, vol. V, p. 165.

and other markers of state territory; parts of water-management structures; items owned by the state treasury; warning signs; public lanterns; buildings; road and water infrastructure; fields; orchards; and farming tools. Damage to, or destruction of, these objects gave rise to penal liability. Offences against sacral objects were penalised as well. Harsher penalties were provided for manslaughter associated with setting fire to, or damaging, a building, or if the offender destroyed property entrusted to them. The Code contained a section dedicated to the destruction of, or damage to, another's property. A subsection dealt with arson and destruction using gunpowder, gas, or other flammable substances. Article 1108 is worth mentioning, as it listed arson of objects such as churches, palaces, museums, archives, scientific centres, and libraries. In connection with the seizure of artistic assets, the Code enumerated items such as works of fine arts and crafts. Article 1123 provided for liability for the destruction of structures, and the subsequent provisions described the destruction of chattels (Lenczowska-Soboń 2022, 36).

While the Code did not employ expressions such as 'historic monument' or 'cultural asset', it did provide stricter penalties for the arson of institutions such as museums, libraries, palaces, or archives. These could themselves be regarded as historic monuments or might house historic items, which means the Code, directly and to a limited extent, addressed the protection of historic monuments through its penal provisions relating to such institutions (*ibidem*).

The 1903 Tagantsev Code was another legal milestone, amended after Poland regained independence. It remained in force until 1932, when it was replaced by Makarewicz's Penal Code¹⁸. The latter was casuistic and consisted of extensive provisions detailing various types of crime. It was in force in Congress Poland from 1915 to 1917 (Lesiński, Rozwadowski 2007, 359).

The general provision on damage to property in Article 547 provided for detention or a fine of up to one hundred roubles. Subsequent provisions addressed liability for acts affecting particular objects, with harsher punishments than under Article 547. For example, imprisonment was prescribed for destroying a work of art owned by the imperial palace, a public library, or a museum. The Code went on to define other forms of the destruction of, or damage to, property. Particular attention needs to be drawn to Article 563, which penalised property destruction by means of arson, explosion, or sinking. This type of offence concerned, among other objects, churches, libraries, museums, and other state or public collections of scientific and artistic items.

18 The Ordinance of the President of Poland dated 11 July 1932 – Penal Code (OJ 1932, No. 60, item 571).

Such acts were punished severely, as they affected assets of particular significance to culture and society (Sznepik 2016, 10–11).

The Russian penal codes did not provide for penalties specifically directed at the destruction of historic monuments. However, two major legal acts addressed this issue: Tsar Nicholas I's decree of 31 December 1826, which prohibited the destruction or demolition of historic buildings, and the Tsar's decree of 11 March 1889, which established the Imperial Archaeological Commission's exclusive right to conduct excavations, issue excavation permits, and supervise the renovation of historic architecture. A fine of five roubles was imposed for non-compliance with these regulations (Szczerba 2012, 65–68).

The care of historic monuments in the Russian Partition did not differ greatly from the standards applied elsewhere in the Russian Empire. A 1837 decree was the first legal act concerning the protection of historic monuments. The Imperial Archaeological Commission was established in 1859 and was endowed with both advisory and executive powers. It was responsible for examining antiquities connected with the history of the country and of the nations living in Russia; collecting information about historic monuments within the state's territory; the scholarly evaluation of antiquities discovered; supervising and coordinating major earthworks, such as road construction, where archaeological monuments might be found; and securing historic treasures and artefacts against destruction or demolition (Lenczowska-Soboń 2022, 38).

The Imperial Archaeological Commission focused mainly on collecting information about historic objects and archaeological discoveries made in the process of earthworks. Securing historic monuments against destruction was its key objective. It was generally assumed that any archaeological finds should be submitted to the Commission. However, regulations prohibiting the export of historic monuments or penal provisions governing the destruction of ancient monuments were absent. Russia had no comprehensive legal framework for the protection of historic monuments in all its aspects. Only in 1914 was a draft law prepared by the Central Archaeological Commission in St Petersburg submitted, but it was not adopted owing to the revolution (Wojciechowski 1930–1931, 4).

6 Conclusion

No regulations concerning the penal-law protection of historic monuments as such were introduced by any of the partitioning powers. Liability for the destruction of historic monuments was addressed under general laws, as for

example arson. When Poland regained independence, a range of penal codes from the time of the Partitions remained in force in its territory: the 1903 Russian penal code in the former Russian Partition, the 1852 penal law in the former Austrian area, and the German penal code in the former Prussian Partition.

Penal liability for the destruction of historic monuments was determined under the general laws prevailing in the partitioning states, as none of them had provisions dedicated to the protection of historic monuments. The penal codes of the partitioning states were replaced in 1932 by a new Penal Code and an Offences Act, introduced by ordinances of the President of Poland. With regard to the protection of historic monuments, the 1918 decree and, subsequently, the President's ordinance of 1928 were in force, regulating these matters in the new legal reality.

In general, the protection of historic monuments was not a priority for the partitioning states, and the law failed to provide for a special legal protection of such objects. The destruction of historic monuments was addressed under general provisions on the destruction of property, which did not ensure adequate protection of Polish cultural heritage. Only after Poland regained independence in 1918 were legal acts introduced that systemically governed the protection of historic monuments, beginning with the 1918 decree and the 1928 ordinance. The 1932 codification provided a more comprehensive approach to the protection of cultural heritage, laying foundations for the contemporary protection of historic monuments in Poland. This example shows how important clear legal regulations are in effectively protecting national heritage from destruction or negligence.

References

- Borkowska-Bagieńska, Ewa. *Historia prawa sądowego*. Warszawa: LexisNexis, 2010.
- Demetrykiewicz, Włodzimierz. *Opieka prawna w Austrii dla zabytków sztuki i pomników historycznych. Ze szczególnym uwzględnieniem stosunków galicyjskich*. Kraków: Wydawnictwo "Nowej Reformy", 1885.
- Demetrykiewicz, Włodzimierz. *Konserwatorstwo dla zabytków archeologicznych. Studium ze stanowiska dziejów kultury i nauki porównawczej prawa*. Kraków: Czyżewski-Fischer, 1886.
- Dobosz, Piotr. *Systemy prawne ochrony zabytków z perspektywy teorii prawa administracyjnego*. Kraków: Studio Cubus, 2015.
- Frycz, Jerzy. *Restauracja i konserwacja zabytków architektury w Polsce w latach 1795–1918*. Warszawa: PWN, 1975.

- Grzybowski, Konstanty. *Historia państwa i prawa polskiego, t. IV, Od uwłaszczenia do odrodzenia Państwa*, ed. by Juliusz Bardach. Warszawa: Państwowe Wydawnictwo Naukowe, 1982.
- Lenczowska-Soboń, Katarzyna. *Przestępstwo zniszczenia lub uszkodzenia zabytku*. Warszawa: Wolters Kluwer, 2022.
- Lesiński, Bogdan and Rozwadowski, Władysław. *Historia prawa sądowego. Zarys wykładu*. Poznań: Ars Boni et Aequi, 2007.
- Lipska, Dąbrówka. "Opieka i ochrona dziedzictwa kulturowego na ziemiach polskich", in *Ochrona zabytków, dodatek specjalny*. Warszawa: Narodowy Instytut Dziedzictwa, 2017.
- Makowski, Wacław. *Prawo karne. O przestępstwach w szczególności. Wykład porównawczy prawa karnego austriackiego, niemieckiego i rosyjskiego obowiązującego w Polsce*. Warszawa: Księgarnia F. Hoesicka, 1923.
- Miklaszewski, Walenty. *Kodeks kar głównych i poprawczych wyd. 1866 dla Królestwa Polskiego (ukaz 25 września v.s. 1876) z objaśnieniami, poczerpniętymi z wyroków kasyjnych Departamentów Senatu Rządzącego*. Warszawa: Maurycy Orgelbrand, 1877.
- Opaska, Janusz. "U źródeł ochrony zabytków: rozwój systemowego konserwatorstwa w Niemczech w początkach XIX w.", *Ochrona zabytków*, no. 1–4 (2010): 199–210.
- Pruszyński, Jan. *Ochrona zabytków w Polsce. Geneza, organizacja, prawo*. Warszawa: PWN, 1989.
- Rymaszewski, Bohdan. *Polska ochrona zabytków*. Warszawa: Wydawnictwo Naukowe Scholar, 2005.
- Sójka-Zielińska, Katarzyna. *Historia prawa*. Warszawa: Wolters Kluwer, 2011.
- Sygit, Bogusław. *Historia prawa kryminalnego*. Warszawa: Zapolex, 2007.
- Szczerba, Adrianna. *Problem ochrony zabytków archeologicznych na ziemiach dawnej Rzeczypospolitej pod panowaniem rosyjskim*. Łódź: Fundacja Uniwersytetu Łódzkiego, Instytut Archeologii Uniwersytetu Łódzkiego, 2012.
- Sznapić, Adrianna. "Krakowskie Towarzystwo Opieki nad Polskimi Zabytkami Kultury i Sztuki przed I wojną światową – próba działalności ponadrozbiorowej", *Studia z dziejów Rosji i Europy Środkowo-Wschodniej*, no. 2 (2016): 9–13.
- Śliwowski, Jerzy. *Kodeks karzący Królestwa Polishgo (1818 r.). Historia jego powstania, próba krytycznej analizy*. Warszawa: Wydawnictwo Prawnicze, 1958.
- Wojciechowski, Jarosław. "Historia powstania i organizacji opieki państwowej nad zabytkami sztuki w Polsce", in *Ochrona zabytków sztuki*, ed. by Jerzy Remer, Warszawa: Towarzystwo Wydawnicze w Warszawie, 1930–1931: 3–33.
- Ziejka, Franciszek. "Ocalić dla potomnych narodowe pamiątki – o społecznym ruchu odnowy zabytków w Krakowie w XIX w.", *Czasopismo Techniczne. Budownictwo*, no. 9 (2009): 11–25.

Preservation of Cultural Heritage in Local Communities



The Role of UNESCO in Safeguarding Cultural Heritage in Local Communities

Katarzyna Głębicka-Auleytner

Abstract This study aims to explain the role of UNESCO in preserving cultural heritage, and the commitment of this specialised UN organisation to the protection and management of cultural heritage. UNESCO issues recommendations and conventions, and announces programmes in this respect. Using the example of the Radom sub-region in Poland, the interdependence between a region's cultural property and values in the life of local communities such as identity, belonging, and tradition – key components in national and social identity – is analysed.

Keywords culture – protection – national heritage – international law – convention – values – identity

1 Introduction

The United Nations Educational, Scientific and Cultural Organization (UNESCO) is a specialised United Nations agency whose aim is to promote peace and security in the world through international cooperation in education, the arts, science, and culture. It was established in London on 16 November 1945 and is currently based in Paris. It has 193 Member States worldwide. Its cultural heritage related aims include supporting inclusive social development and promoting intercultural dialogue to bring cultures closer; protecting, promoting, and transmitting heritage; fostering creativity and the diversity of cultural expression; and promoting freedom of expression, media development, and universal access to information and knowledge¹.

By promoting cultural heritage and the equal dignity of all cultures, UNESCO strengthens bonds among nations. It supports research programmes and policies as platforms for development and collaboration². It exerts a profound influence on community values worldwide. The organisation combines

1 The Constitution of the United Nations Educational, Scientific and Cultural Organization. Adopted in London on 16 November 1945.

2 The Constitution of the United Nations Educational, Scientific and Cultural Organization. Adopted in London on 16 November 1945.

the objectives of urban heritage protection with those of social and economic development. It is rooted in a harmonious and sustainable relationship between urban and natural environments, between the needs of present and future generations, and the legacy of the past.

This paper posits that UNESCO's international initiatives influence the development of local cultural identities and the preservation of cultural heritage. It points to the weight and significance of international action for the protection of cultural heritage and emphasises the role of local communities in realising these objectives. It is local communities that play a crucial role in implementing global objectives and actions for the protection of cultural heritage. UNESCO's international initiatives and legal instruments are analysed. The organisation is charged with protecting cultural heritage on a global scale. Its conventions, recommendations, initiatives, and programmes are implemented by local communities such as those in Poland's sub-region of Radom. Accordingly, the research methods employed here are institutional legal analysis and a case study of the Radom sub-region.

2 The Role of UNESCO in the Area of Culture

UNESCO has standardised the concept and composition of cultural property forming the cultural heritage of every state. Cultural property falls into the following categories³:

- a) cultural property created individually or collectively by the citizenry of a given state, and cultural property of significance to a given state created in its territory by citizens of other states or by stateless persons living there;
- b) cultural property discovered in a national territory;
- c) cultural property obtained through archaeological, ethnological, or natural-scientific expeditions with the consent of the competent authorities of the country from which the property is derived;
- d) cultural property subject to voluntary, consensual exchange;
- e) cultural property received free of charge or legally purchased with the consent of competent authorities of the country from which the property is derived.

3 The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, drafted in Paris on 17 November (OJ 1974, No. 20, item 106), Article 2.

Cultural property is considered property that, for religious or secular reasons, is regarded by any state as significant to archaeology, prehistory, history, literature, art, or science, and that belongs to the following categories⁴ (Article 1):

- a) rare collections and specimens in the fields of zoology, botany, mineralogy, and anatomy; items of palaeontological value;
- b) property connected with history, including the history of science and engineering, military and social history, as well as property connected with the life histories of national leaders, thinkers, scientists, and artists, and events important to a nation;
- c) objects obtained by means of (legal or not) archaeological digs and discoveries;
- d) elements of dismantled artistic or historic monuments, or from archaeological sites;
- e) antiques more than one hundred years old, such as inscriptions, coins, and embossed seals;
- f) ethnological materials;
- g) property of artistic value, such as:
 - paintings and drawings made wholly by hand on any foundation and using any material (except for industrial drawings and articles with hand ornaments);
 - original statuary and sculptures of any material;
 - original sketches, engravings, and lithographs;
 - original artistic sets and assemblies of any material;
- h) rare manuscripts and incunabula, old books, documents and publications of particular (historic, artistic, scientific, literary, etc.) significance as single copies or parts of collections;
- i) postal and duty stamps and similar items as single copies or parts of collections;
- j) archives, including phonographic, photographic, and film archives;
- k) furniture and old musical instruments more than one hundred years old.

The 1954 Convention additionally defined cultural property, regardless of its origin and ownership, as:

- a) moveable or immovable property of great weight to cultural heritage of a nation, e.g., architectural, artistic, or historic monuments, both religious and secular; archaeological sites; building ensembles with a historic or artistic significance as such; works of art, manuscripts, books, and other

4 The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, drafted in Paris on 17 November (OJ 1974, No. 20, item 106), Article 1.

- objects of a historic, artistic, or archaeological significance, as well as scientific collections and serious collections of books, archive materials, or reproductions of such property;
- b) structures principally and practically designed to store or exhibit movable cultural property defined under (a) above, e.g., museums, large libraries, archival repositories, as well as shelters intended to store the cultural property in the event of military conflict;
 - c) centres holding substantial quantities of the cultural property defined under (a) and (b), referred to as 'monument centres'.⁵

In Poland, a legal definition of cultural heritage is set out in J. Pruszyński's monograph *Dziedzictwo kultury Polski* (2001): 'immovable and moveable items and their associated spiritual values, historic phenomena and customs subject to legal protection for the good and development of a particular society and for transfer to next generations, owing to comprehensible and accepted historic, patriotic, religious, scientific, and artistic values that are significant for identity and continuing political, social, and cultural development, the demonstration of truths and commemoration of historic events, and the cultivation of a sense of beauty and civilisational community' (Pruszyński 2001, 9). Intangible cultural heritage, in contrast, comprises representations, traditions, and oral messages, performative arts, customs, habits, and traditional crafts⁶. This form of cultural heritage is promoted through social practices, rituals, festive events, and the like.

The 2024 list of world cultural heritage comprises 1,199 items – 933 cultural, 227 natural, and 39 mixed. The list of threatened heritage comprises 56 items (<https://unesco.org>).

3 International Legislation Concerning Cultural Heritage

The chief authority of UNESCO, the General Conference, is charged with international policy and collaboration and the issuing of legal acts (recommendations or conventions) in the area of cultural heritage⁷. It consists of

-
- 5 Convention for the Protection of Cultural Property in the Event of Armed Conflict, the Enforcement Regulations to this Convention, and the Protocol Concerning the Protection of Cultural Property in the Event of Armed Conflict, signed in The Hague on 14 May 1954 (OJ 1957, No. 46, item 212), Article 1.
 - 6 UNESCO Convention on the Safeguarding of the Intangible Cultural Heritage, drafted in Paris on 17 October 2003 (OJ 2011, No. 172, item 1018), Article 2.
 - 7 Constitution of the United Nations Educational, Scientific and Cultural Organization. Adopted in London on 16 November 1945, Article 4.

TABLE 1 UNESCO recommendations and conventions (source: <https://www.unesco.org/culture>)

UNESCO recommendations	UNESCO conventions
The 1962 UNESCO Recommendation Concerning the Safeguarding of the Beauty and Character of Landscapes and Sites	The Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954
The 1968 UNESCO Recommendation Concerning the Preservation of Cultural Property Endangered by Public or Private Works	The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 17 November 1970
The 1972 UNESCO Recommendation Concerning the Protection, at National Level, of Cultural and Natural Heritage	The 1972 UNESCO Convention Concerning the Protection of World Cultural and Natural Heritage
The 1976 UNESCO Recommendation Concerning the Safeguarding and Contemporary Role of Historic Areas	The 2001 Convention Concerning the Protection of Underwater Cultural Heritage
The 1989 UNESCO Recommendation Concerning the Safeguarding of Traditional Folk Culture and Folklore	The 2003 UNESCO Convention on the Safeguarding of the Intangible Cultural Heritage
The UNESCO Recommendation on the Historic Urban Landscape	The 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions

representatives from the Member States. The major UNESCO acts concerning the preservation of cultural heritage are listed in Table 1.

Since its establishment eight decades ago, UNESCO has adopted twelve complementary normative acts concerning the protection of cultural heritage. They form a set of instruments to support efforts to safeguard cultural diversity.

Although nearly thirty years passed between the 1972 Convention and next two contractual instruments, a number of other documents in this field were adopted in the interim, above all recommendations and declarations. These also preceded the drafting of the most recent convention and influenced its content (Przyborowska-Klimczak, 6).

The documents listed above impose on every state that has ratified the Convention a duty to ensure the identification, protection, restoration,

revalorisation, and transmission to future generations of cultural and natural heritage⁸. This policy should therefore be incorporated into general planning programmes⁹.

UNESCO recognises the special significance and character of cultural goods and services as carriers of identity, values, and meaning¹⁰. Respect for human rights, including the freedom of choice in forms of cultural expression, the principle of sovereignty, the equal dignity of and respect for all cultures, solidarity and international cooperation, complementarity, fair access, openness, and balance are among the guiding principles (1972 Convention, Article 2). Education and raising public awareness of culture are important in this connection (*ibid.*, Article 10). A significant role is attributed to civic society, which should act to promote the diversity of cultural expression (*ibid.*, Article 11).

The state parties to the Convention of 1970 accept that the illegal import, export, and ownership transfer of cultural property are among the major causes for the impoverishment of cultural heritage in countries of origin, and that international collaboration is one of the most effective means of safeguarding such property against associated dangers. To this end, the State Parties agree to counteract such practices by all available means, in particular by removing the causes, discontinuing the practices, and assisting in the necessary remediation of their consequences¹¹.

In the context of ongoing military conflict, cultural property must be safeguarded in peacetime to prevent serious damage and destruction in the course of military operations. UNESCO therefore calls on states to put in place protective measures for cultural assets in their territories in advance of the foreseeable consequences of armed conflict, taking appropriate steps for this purpose¹². Cultural property must bear identifying emblems and may be eligible for special protection (for example, in shelters)¹³.

8 UNESCO 1972 Convention Concerning the Protection of World Cultural and Natural Heritage (OJ 1976, No. 32, item 190), Article 4.

9 *Ibidem*, Article 5.

10 UNESCO 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions (OJ 2007, No. 215, item 1585), Article 1(g).

11 The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, drafted in Paris on 17 November 1970 (OJ 1974, No. 20, item 106), Article 2.

12 The Convention for the Protection of Cultural Property in the Event of Armed Conflict, the Enforcement Regulations to this Convention, and the Protocol Concerning the Protection of Cultural Property in the Event of Armed Conflict, signed in The Hague on 14 May 1954 (OJ 1957, No. 46, item 21), Article 3.

13 *Ibidem*, Article 8.

4 UNESCO Programmes in the Field of Cultural Heritage

The most recent international initiatives and events in the field of culture were set out in UNESCO's *Medium-Term Strategy 2014–2021*, adopted by the General Conference at its 37th session in November 2013. It was the fourth programme of this kind. Its main lines of action are:

1. the protection, restoration, promotion, and transmission of cultural and historic heritage for the sake of dialogue and development (especially through implementation of the 1954, 1970, 1972, and 2001 UNESCO Conventions);
2. support for and promotion of diverse forms of cultural expression, safeguarding of intangible cultural heritage, and the development of cultural and creative industries (in particular through implementation of the 2003 and 2005 UNESCO Conventions).

In recent years, UNESCO's activities have been shaped by nine strategic objectives, namely:

- a) supporting Member States in developing educational systems designed to ensure high-quality, inclusive lifelong education for all;
- b) educating creative and responsible global citizens;
- c) continuing efforts to realise the Education for All programme and shaping the future international educational agenda;
- d) creating platforms for cooperation between science, politics, and society, and promoting policies on ethics and politics;
- e) counteracting social exclusion for sustainable development;
- f) facilitating international research collaboration for peace, sustainable development, and counteracting social exclusion;
- g) supporting inclusive social development and promoting intercultural dialogue to bring cultures closer;
- h) protecting, promoting, and transmitting heritage;
- i) fostering creativity and the diversity of cultural expression;
- j) promoting freedom of expression, media development, and universal access to information and knowledge.

As part of this programme, the Polish National Commission for UNESCO has also organised a number of events and conferences, for example a conference marking the twentieth anniversary of the UNESCO Creative Cities Network and ten years of Polish cities' membership in the Network, held in the palaces and park ensemble in Ostromecko near Bydgoszcz on 14 and 15 May 2024 (www.unesco.pl).

The UNESCO Creative Cities Network was established in 2004 to foster collaboration among cities that treat creativity and the development of cultural

TABLE 2 Polish members of the UNESCO Creative Cities Network (source: www.unesco.pl/creative-cities-network)

City	Title	Year of joining
Cracow	The City of Literature	2013
Katowice	The City of Music	2015
Łódź	The City of Film	2017
Wrocław	The City of Literature	2019
Gdynia	The City of Film	2021
Bydgoszcz	The City of Music	2023

industries as strategic factors in sustainable development. The programme aims to raise public awareness of the significance of culture and its development potential in various areas of public life, including the economy; to foster the establishment of innovative centres of creativity, cultural goods, and services; and to enhance access to, and participation in, culture, especially for marginalised groups.

The UNESCO Creative Cities Network covers seven areas of creativity: literature, music, film, crafts and folk art, design, gastronomy, and media arts. It currently comprises 350 cities active across these cultural fields. Six Polish cities are members (Table 2).

The conference discussed the current operation of the UNESCO Creative Cities Network, in particular synergies and cooperation among UNESCO programmes and networks. Participants learned about the activities of the Polish members of the Network – Cracow, Katowice, Łódź, Wrocław, Gdynia, and Bydgoszcz. City programme coordinators shared their experience and good practice in the fields of literature, music, and film.

5 The World Heritage Committee

The 45th meeting of the World Heritage Committee – an intergovernmental body operating under the UNESCO Convention Concerning the Protection of World Cultural and Natural Heritage (Riyadh, 10–25 September 2023) – should also be mentioned. The Committee’s main tasks include reviewing the state of conservation of selected properties, including those listed as endangered, and taking decisions on properties submitted for inscription on the World Heritage List in 2022 and 2023, or for inclusion on the List of World Heritage in Danger (<https://whc.unesco.org>).

The Committee considered state-of-conservation reports on 260 World Heritage sites and adopted corresponding decisions. Twenty-six of these were debated. Decisions related to the following World Heritage sites in Poland were adopted without debate: Białowieża Forest (a transborder property); the ancient and primeval beech forests of the Carpathians and other European regions (a serial property in 18 countries); Auschwitz Birkenau, the German Nazi concentration and death camp (1940–1945); the Centennial Hall in Wrocław; Tarnowskie Góry lead-silver-zinc mine and its underground water management system; and the Krzemionki prehistoric banded flint mining region.

In light of the risks arising from Russia's aggression against Ukraine, Saint Sophia Cathedral and its related monastery buildings in Kyiv, as well as the Kyiv-Pechersk Lavra and Lviv's historic centre were listed as endangered heritage, while the Kasubi Tombs in Uganda were removed from the list.

The World Heritage Committee considered 50 nominations and decided to inscribe 42 new sites on the World Heritage List, as well as to extend five existing inscriptions.

6 UNESCO Educational Programmes Supporting Cultural Heritage

UNESCO runs a range of educational programmes designed to protect and promote cultural heritage worldwide. Some of the most important UNESCO initiatives supporting cultural heritage include:

6.1 The World Heritage Programme

The programme aims to protect and preserve unique places of outstanding universal value, both cultural and natural. These are inscribed on the UNESCO World Heritage List, which includes historic monuments, cities, landscapes, and other sites of particular significance to humanity. The programme also promotes education about the protection of cultural and natural heritage. To this end, workshops, training, and conferences are arranged on the heritage protection, research into historic monument protection is supported, and public awareness of the value of cultural heritage is raised.

6.2 The Memory of the World Program

The programme aims to protect documents and other sources of great value to the history of humankind, including written documents and other knowledge

records of knowledge, such as photographs, films, and audio recordings. Its educational dimension involves promoting the preservation and digitalisation of documents and other materials, raising awareness of the importance of historic documents for the protection of cultural heritage, and fostering cooperation with libraries, archives, and other institutions worldwide.

6.3 Education for Sustainable Development

Although the promotion of sustainable development is the cornerstone of the programme, substantial emphasis is placed on the role of culture and heritage in creating more sustainable societies. The programme encourages learning about cultural heritage, including its protection, as part of broader action for sustainable development. It fosters education on the role of cultural heritage in building a sustainable society and organises educational programmes for young people, teachers, and decision-makers concerning cultural heritage.

6.4 The International Dance Council (CID)

The programme focuses on the protection and promotion of traditional dances, which form part of the cultural heritage of many nations. CID organises festivals, workshops, and educational programmes intended to preserve dance traditions in diverse cultures.

6.5 Heritage Education for Children and Youth

The programme promotes education among younger people about the value of both tangible and intangible cultural heritage. It is addressed to children and youth in order to teach respect for tradition and history and to encourage active participation in heritage protection.

6.6 The UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage

This Convention is designed to protect traditional practices, rituals, holidays, performing arts (for example theatre, music, and dance), and traditional crafts, all of which form parts of intangible heritage. In connection with the Convention, UNESCO organises a range of educational programmes to raise awareness of intangible heritage and its protection.

6.7 The International Year of Folk Culture and Shared Heritage

This initiative forms part of UNESCO's actions focusing on supporting folk heritage and tradition. The programmes aim to promote education about the significance of human heritage, both cultural and historic, in different regions of the world.

All of these UNESCO programmes provide broad support for education about cultural heritage and its protection. They are addressed to various age and professional groups, including young people, teachers, researchers, cultural institutions, and decision-makers. Education on cultural heritage is a cornerstone of UNESCO's efforts to ensure that heritage is preserved and passed on to subsequent generations.

7 Cultural Heritage in Local Communities – The Radom Sub-Region

The Polish National Committee of the International Council on Monuments and Sites (ICOMOS-Poland) is an international non-governmental organisation affiliated with UNESCO (www.icomos-poland.otg/pl). The core tasks of ICOMOS-Poland include promoting methods of cultural heritage protection and monument conservation, and supporting new research into theories and technologies that contribute to the preservation of historic heritage, including buildings and architectural ensembles, historic urban, palace, garden, and residential layouts, archaeological sites, and cultural landscapes. Key activities also include evaluating nominations for inscription on the World Heritage List and monitoring Polish cities, sites, and objects already inscribed on the List. The organisation aims to promote Polish achievements in historic monument protection abroad, and to apply international best practices in the Polish context (Blake 2006, 7).

According to the International Council on Monuments and Sites (ICOMOS), historic urban areas are situated in towns and cities, including historic centres or quarters and their natural and made-made environments. In addition to serving as historic documents, they reflect the values of traditional urban cultures (Blake 2006, 7).

The sub-region of Radom is situated in the south of the Mazovian region, about a hundred kilometres south of Warsaw, on an ancient royal route (Gęsiak 1990, 3). There are a number of valuable artistic monuments across the sub-region, representing major periods and styles from Classicism to

Romanticism. These include works of architecture, sculpture, and painting (Gardocka and Sobczak 2010, 10).

The Radom sub-region comprises eight counties and lies on the borderland between two cultural areas, Mazovian and Małopolska (Lesser Poland). Sacred buildings and works occupy pride of place in the region and have, for centuries, integrated local communities as centres of worship (Rogólski 2002, 7). They express the cultural and historic identity of this area most profoundly. The oldest church, the Church of St Peter in Radom, was erected during the development of the Polish state (eleventh/twelfth centuries). The area was named Piotrówka after this first church, which no longer survives.

The Polish poet Jan Kochanowski (1530–1584) was born in Sycyna. The manor at Czarnolas, where he lived and wrote, is now a popular museum, while his epitaph effigy can be seen in the church in Zwolen, where he was buried. Oskar Kolberg (1814–1890), a scholar of Polish folklore whose family home now houses an ethnographic museum, came from Przysucha, in the opposite direction from Radom. Landscape motifs from around Radom can often be found in the paintings of Jacek Malczewski (1854–1929). The Jacek Malczewski Regional Museum in Radom holds a collection of his works.

The Gothic style (thirteenth–sixteenth centuries) has been preserved chiefly in sacral architecture. A Gothic presbytery can be found in the oldest church in Radom, St Wencelaus (ca. 1300). Following thorough revalorisation, the structure has regained its former architectural form and cultural function (Rogólski 2002, 8). Further examples of extant Gothic churches include: St John the Baptist and St Catherine (Bernardine) in Radom, St Sigismund in Szydłowiec, and the churches in Chlewiska, Grójec, Ilża, Klwów, Odechów, Sienno, Wieniawa, and Wrzos (Rogólski 2002, 8). They feature rich architectural programmes, including ceilings decorated with coats of arms and sculptural details; their furnishings include fine works of art ranging from Gothic to Classical (*ibid.*, 9).

Medieval defence structures were established in Ilża, where the ruins of a bishops' castle still overlook the town, in Solec nad Wisłą, founded by Casimir the Great, and in the seats of the Odrowąż family in Chlewiska and Szydłowiec. The Szydłowiec castle, the former property of the wealthy Odrowąż and then Radziwiłł families, has been overhauled to become a culture centre. A range of Renaissance paintings are extant in Szydłowiec, too (Zeidler, 2010, 18). Historic paintings and sculptures from the times of the Nobles' Republic are mainly part of church interior furnishings, including altarpieces and epitaphs showing the images of the dead (Sawaniewska-Mochowa, Zielińska, 2007, 32), thereby forming galleries of outstanding personages of their time. The largest set of

Baroque epitaphs can be found in the Bernardine church in Radom, a nobles' necropolis in the seventeenth and eighteenth centuries (Rogólski 2002, 12).

Alongside sacral structures and museums, the Radom Village Museum forms part of the region's cultural heritage. It has preserved a range of historic rural structures (including manors, windmills, cottages, and barns) and holds extensive ethnographic collections. A manor-and-park complex known as the Polish Sculpture Centre, an artistic and museum institution, is based in Orońsko. Szydłowiec is home to the Museum of Folk Musical Instruments, with its extensive collection of instruments from across Poland.

Regional museums in some smaller towns of the Radom sub-region present its material culture (Włodarski 2008, 46). Events referring back to local history are held each year, as for example re-enactments of knightly tournaments in Iłża and Taczów. Historical re-enactment groups present jousting, displays of arms, falconry, medieval camps, and cuisine. The traditional culture of the Radom region forms part of the broader Polish national culture. It transmits national identity to successive generations through shared historical experience and national achievements in literature, music, theatre, architecture, folk costumes, rituals, and art. Once preserved, cultural heritage continues to be cultivated by folklore bands and folk artists (Pulnar 2000, 163). It is also transmitted orally (Kocój 2019, 35).

8 Conclusion

The landscape-based approach to historic urban heritage reflects the fact that both the theory and practice of urban heritage protection have evolved considerably over the decades, enabling decision-makers and managers to respond more effectively to new challenges and opportunities. This approach supports communities in developing and adapting to new conditions while preserving the characteristics and values associated with their history, collective memory, and environment.

Human life has always comprised elements such as everyday work, holidays and associated rituals, and artistic creativity. From these, culture and national identity can be reconstructed. Cultural heritage permeates our life and society. It is present in buildings, landscapes, and archaeological sites. It is shaped not only by literature, art, and historic objects, but also by crafts, storytelling, culinary traditions, songs, and films. Cultural heritage is what binds us and helps understand the places in which we live. It also has a positive impact on society: it improves quality of life, social cohesion, and intercultural dialogue, and it

integrates local communities. Cultural heritage plays a major economic role as well. Millions find work in the cultural heritage sector, for instance, in tourism, construction, and the restoration of works of art. Cultural heritage is not only a legacy of earlier generations; it is also a foundation for our future.

In the area of culture, UNESCO is guided by three strategic objectives:

- a) To develop and implement legal standards, with particular regard to the protection of cultural heritage;
- b) To protect cultural diversity and build dialogue between cultures and civilisations, based on respect for human rights and democracy;
- c) To strengthen links between culture and development by promoting good practice and sharing experience, for instance in the field of cultural policy.

International Cultural Heritage Day is celebrated every year on 18 April. The celebrations are intended to draw attention to the importance of protecting cultural heritage and to raise awareness of the need to safeguard it for future generations.

References

- Blake, Janet. *Commentary on the UNESCO Convention on the Intangible Cultural Heritage*. Crickadarn, UK: Institute of Art and Law, 2006.
- Constitution of the United Nations Educational, Scientific and Cultural Organization, 16 November, London 1945. Available at: <https://www.unesco.org/en/legal-affairs/constitution> [accessed: 11 Feb. 2026].
- Gardocka, Teresa and Sobczak, Jacek (ed.). *Prawna ochrona zabytków*. Toruń: Adam Marszałek, 2010.
- Gęsiak, Wojciech. *Radom*. Radom: Urząd Miasta Radomia, 1990.
- Kocój, Ewa. *Między mainstreamem a undergroundem. Dziedzictwo regionalne w kulturze europejskiej – odkrywanie znaczeń*, in *Dziedzictwo kulturowe w regionach europejskich. Odkrywanie, ochrona i (re)interpretacja*, “Studia nad dziedzictwem i pamięcią kulturową” publishing series, vol I, ed. by Ewa Kocój, Tomasz Kosiek and Joanna Szulborska-Łukaszewicz. Kraków: Wydawnictwo Uniwersytetu Jagiellońskiego, 2019.
- Pruszyński, Jan. *Dziedzictwo kultury Polski*. vol I. Kraków: Kantor Wydawniczy Zakamycze, 2001.
- Przyborska-Klimczak, Anna. “Międzynarodowa ochrona niematerialnego dziedzictwa kulturalnego”, in *Problemy Współczesnego Prawa Międzynarodowego, Europejskiego i Porównawczego*, vol. III, 2005.

- Pulnar, Janusz (ed.), *Radomskie wędrówki regionalne. Przewodnik edukacji regionalnej*. Radom: Instytut Technologii Eksploatacji, 2000.
- Rogólski, Piotr. *Radomskie – szlakiem zabytków*. Radom: Instytut Technologii Eksploatacji, 2002.
- Sawaniewska-Mochowa, Zofia and Zielińska, Anna. *Dziedzictwo kultury szlacheckiej na byłych Kresach północno-wschodnich Rzeczypospolitej, Ginąca część kultury europejskiej*. Warszawa: Instytut Slawistyki PAN, 2007.
- Włodarski, Józef (ed.). *Prawo muzeów. Książka dedykowana pamięci prof. Jana Pruszyńskiego (1941–2008)*. Warszawa: Wolters Kluwer, 2008.
- Zeidler, Kamil (ed.). *Leksykon prawa ochrony zabytków*. Warszawa: C.H.Beck, 2010.

Country Housewives' Associations as Decentralised Safeguards of Intangible Cultural Heritage

Agata Barczewska-Dziobek

Abstract In the wording of the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, intangible cultural heritage is defined as 'the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognise as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment [...] and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity.'

The Polish legal system comprises a range of entities responsible for safeguarding both tangible and intangible cultural heritage, most of them public. In line with the principle of decentralisation, the system is supplemented by non-public entities, including civil society organisations. Country Housewives' Associations are an example of the subsidiary participation of civil society actors in identifying and protecting cultural heritage. These are women's organisations active in rural areas, particularly in safeguarding intangible cultural heritage. This study describes the background of women's organisations in Poland, the legal foundations of Country Housewives' Associations as civil society organisations, and their objectives and significance within the system of bodies involved in cultural heritage protection. The detailed areas of research are developed using the following research methods: historical-legal, doctrinal-legal, descriptive, and empirical. The discussion draws on the current legal status (except in the historical section), related literature, and selected examples of good practice.

Keywords Country Housewives' Associations – intangible cultural heritage – decentralised entities

1 Introduction

Safeguarding the achievements of humanity is subject to legal protection and serves both as a means of protecting the achievements of artists and generations of the past and as an obligation towards future generations. It has been

rightly observed the governance model should prevail over purely participatory models when designing organisational systems of bodies charged with the preservation of heritage (Zeidler 2007, 13). This means that the organisational systems of state bodies responsible for safeguarding heritage (national, cultural, tangible, or intangible) is supplemented by other entities that perform their tasks on a subsidiary basis, in accordance with the principle of decentralisation¹. These include both local government and civil society organisations.

Decentralisation is a foundational principle in the Republic of Poland, enshrined in the Constitution². It presumes independence in the performance of tasks (Fundowicz 2005, 29). Accordingly, entities that, by virtue of their place with the state structure, are able to carry out their tasks more effectively than central bodies form part of the public system of cultural heritage protection (Zalasińska 2022, 11).

2 Intangible Cultural Heritage and Its Safeguarding

The international legal protection of cultural heritage has, over the years, been shaped by a range of factors. The fundamental reason has been the desire and need to protect the most valuable works of human creativity for future generations. An equally important motivation has been military conflict and warfare, which cause destruction and often the irreversible loss of such assets. Other drivers include states' inability to protect works within their territories and the need to adapt heritage-protection law to changing conditions. This creates the need for effective international mechanisms to safeguard and monitor different forms of heritage so that present and future generations can benefit from cultural achievements. The development of heritage-protection legislation is an ongoing process and has been the subject of numerous conventions and treaties, whose material scope continues to expand. Intangible cultural heritage itself became an object of international protection only in the twenty-first century (Przyborowska-Klimczak 2011, 9–11).

In the wording of the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, drafted in Paris on 17 October 2003 and ratified by Poland in 2011³, the concept of intangible heritage means 'the practices,

1 Council conclusions on participatory governance of cultural heritage (2014/C 463/01). Available at: [https://eur-lex.europa.eu/legal-content/PL/TXT/PDF/?uri=CELEX:52014XG1223\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/PL/TXT/PDF/?uri=CELEX:52014XG1223(01)&from=EN) [accessed: 11 Feb. 2026].

2 The Constitution of the Republic of Poland, dated 2 April 1997, OJ 1997, No. 78, item 483 as amended.

3 OJ 2011, No. 172, item 1018.

representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment [...] and provides them with a sense of identity and continuity' (Blake 2006, 30–39). The existence and continued safeguarding of intangible cultural heritage fosters respect for cultural diversity and human creativity.

Intangible cultural heritage is manifested in areas such as:

- oral traditions and expressions, including language, as a vehicle of intangible cultural heritage;
- performing arts;
- social practices, rituals, and holiday events;
- knowledge and practices concerning nature and the universe; and
- traditional craftsmanship⁴.

Ensuring the viability of intangible cultural heritage is the overarching objective of its safeguarding, in particular through its identification, documentation, study, preservation, promotion, strengthening, and transmission, especially through education and revitalisation (Niewęłowski et al. 2015, 158).

The general definition set out in the Convention has been specified for the Polish conditions, in line with its assumptions. The minister responsible for culture and national heritage has appointed a team on intangible cultural heritage. The team has prepared an application for inscription on the national list of intangible cultural heritage and proposed a more specific understanding of intangible cultural heritage. Although not a legal definition, it nonetheless makes the general notion more concrete. Accordingly, intangible cultural heritage in Poland is understood as activities in the following areas:

- a) oral traditions and expression (such as fables, proverbs, songs, oratory, memorial and belief tales, speeches, funeral lamentations, and pastoral and trade calls), including those expressed in language as a vehicle of intangible cultural heritage;
- b) performing arts and musical traditions (such as vocal, instrumental, and dance traditions; religious, carnival, and annual performances);
- c) socio-cultural traditions (such as customs, rites, and annual, occasional, and family rituals: baptisms, weddings, funerals; local and community ceremonies; parish patronal festivals and pilgrimages; games; children's folklore; festive customs; practices facilitating interpersonal contacts, e.g. forms of greeting and well-wishing);

4 Article 2 of the Convention.

- d) knowledge and practices relating to nature and the universe (such as traditional worldviews; folk meteorology; traditional methods of husbandry; traditional remedies; love or healing charms);
- e) knowledge and skills relating to traditional crafts (Adamowski and Smyk 2013, 11).

The activities of Country Housewives' Associations, a distinctive type of civil society organisation, are closely connected to the safeguarding of intangible heritage and the implementation of the objectives set out in the applicable legislation.

3 Country Housewives' Associations in Poland – a Historical Outline

Scholars tracing the origins of Country Housewives' Associations in Poland disagree as to their beginnings. Some claim that the first organisation of this kind was formed in 1866 in the Prussian Partition, in Piaseczno, where a civil society activist founded a 'Housewives Association' (Frączak 2021, 44–45). Others point to the former Russian Partition and to 1877 in Janisławice, where the female activist Filipina Płaskowicka established a women's organisation called a Country Housewives' Association (Środa 2009, 367). In any event, the term 'country housewives' association' became sufficiently widespread that, after Poland regained independence in 1918, grassroots women's initiatives adopted the common name 'Country Housewives' Association'. A central organisation of Country Housewives' Associations emerged in the interwar period; by 1938, it had more than 52,000 members affiliated with 2,800 associations (Prezydent RP, 2024).

Women's activities in Country Housewives' Associations were often led by local elites and enjoyed broad recognition. They engaged in cultural and educational work, for example by cultivating local traditions, and organising demonstrations and courses in baking and cooking (including food processing), animal husbandry, design and sewing, child-rearing and care (including hygiene and a balance diet), the running of care facilities, and training women in home defence (Frączak 2021, 47).

The rapid development of Country Housewives' Associations was interrupted by the outbreak of the Second World War. With government support, women's organisations were reactivated after the collectivisation of agriculture in 1948, although women's civic activity was suspended for a period as a result. Country Housewives' Associations re-emerged after collectivisation

was abandoned in 1956. The Agricultural Development Fund was established in 1957 to coordinate the organisation and activities of Country Housewives' Associations and farmers' cooperatives. As Country Housewives' Associations could be financed from central funds and, as the employment structure changed and women began to take over farms, their activities gathered pace, the associations flourished from the 1960s through to the 1980s (Zajko-Czochańska 2017, 88).

Following the systemic transformations and economic crisis of the early 1990s, Country Housewives' Associations regained their momentum in the twenty-first century. Amendments to laws underpinning their operation – most notably the dedicated Act adopted in 2018 – have contributed to this. Some organisations that existed in previous decades have been reactivated, and new ones have emerged. Country Housewives' Associations may be regarded as the largest organisation of rural women in Poland. Data held by the Centre for Economic Information suggest that more than 14,000 such organisations exist.

4 The Legal Foundations and Nature of Country Housewives' Associations as Non-Governmental Organisations

The nature of Country Housewives' Associations is a major drawback and one reason for the difficulties in determining their actual number. On the one hand, the 2018 Act defines a Country Housewives' Association as a 'voluntary self-governing organisation of rural inhabitants that is independent of government administration and local authorities, supports the development of entrepreneurship in the countryside, and acts for rural communities'.

A Country Housewives' Association established under the 2018 Act is not an ordinary non-governmental organisation, although it may perform a variety of socially useful functions that are important to rural areas. These women's organisations are members of local action groups or local cultural institutions. Importantly, through their involvement in a range of activities, they play a major role in safeguarding intangible cultural heritage.

A study by the Workshop for Social Research and Innovation Stocznia (Dockyard) notes: 'Each association defines for itself what it engages in, and there are so many types of activity that they cannot all be described here' (Milczewska et al. 2014, 20).

A Country Housewives' Association may operate within the following legal frameworks:

- the Law on Associations of 7 April 1989⁵ (as an association);
- the Act on the Civic and Professional Organisations of Farmers of 8 October 1982⁶ (as part of the National Association of Farmers, Agricultural Cooperatives and Organisations, as an independent farmers' cooperative, or within an agriculture cooperative);
- the Country Housewives' Associations Act of 9 November 2018⁷;
- as an informal group (a natural-person entity) (as an ordinary association).

The Association Law defines an association as a voluntary, self-governing, continuing, non-profit organisation⁸. This definition implies that, as a self-governing organisation, an association enjoys full freedom to determine its objectives, and that this independence may be restricted only in a few cases (Suski 2018, 57). An association is entered in the National Court Register and acquires a legal personality upon registration.

An association, regardless of its nature, has the status of a non-governmental organisation under the separate provisions of the Public Benefit and Volunteer Work Act of 24 April 2004⁹. This Act defines non-governmental organisations as legal entities and organisational units without legal personality, other than public finance institutions, operating on a non-profit basis. By way of example, it designates foundations and associations as non-governmental organisations.

A Country Housewives' Association operating under the general rules may be established by at least seven Polish citizens with full legal capacity. They adopt the association's statutes and elect an administrative board and supervisory bodies. An association may join with others, engage in business activity or paid public-benefit operations, and establish branches¹⁰.

Under this legislation, so-called ordinary associations may also be established in a simplified manner. Only three founders are required to approve of the regulations and to elect the governing bodies. An ordinary association is registered with the *staroste* competent locally for its registered seat¹¹. It does not have legal personality, however, which in practice greatly restricts its capacity to raise funds and enter into contracts.

The legislation allows an association to determine its objectives independently; accordingly, they may cover a range of public tasks. In the case of Country Housewives' Associations, these may include, for example, upholding

5 I.e., OJ 2020, item 2261.

6 I.e., OJ 2024, item 263.

7 I.e., OJ 2023, item 1179.

8 Article 2 of the Association Law.

9 OJ 2023, item 561.

10 Articles 9–10a of the Association Law.

11 Article 40 of the Association Law.

national traditions; caring for Polish heritage; developing national awareness; undertaking civic, cultural, and artistic activities; and safeguarding cultural assets and traditions¹².

Under the current legal framework, a Country Housewives' Association may also operate as an independent farmers' cooperative under the Act on Social and Professional Organisations of Farmers of 8 October 1982¹³. Its provisions are intended to enable farmers and their family members to associate freely in organisations defending the professional interests of self-employed farmers and to participate in developing and implementing state policies for the economic, social, civic, cultural, and educational development of rural areas¹⁴.

These provisions envisage several types of social and professional organisations of farmers, including Country Housewives' Associations. Nevertheless, a Country Housewives' Association established and operating under this Act does not have legal personality. Under the Act, its principal objective is to represent the interests of rural women and their families by working to improve their social and professional position. Associations formed in this way operate on the basis of by-laws setting out their objectives and tasks, members' rights and duties, and procedures for decision-making and adopting resolutions. The by-laws may also regulate the participation of women who are not members in the association's activities, provided that their work is connected with rural communities (Krawiec 2021, 7).

Under the earlier legal framework, Country Housewives' Associations, as separate units within farmers' cooperatives, could operate only as provided for in the cooperative's statutes and association's by-laws. They were not permitted, for example, to become founders or members of cooperatives providing agricultural and other services needed by rural communities. As parts of farmers' cooperatives, they could not enter into civil-law contracts in their own right.

A Country Housewives' Association could also operate as an independent farmers' cooperative. In that case, it functioned under its own statutes and could draft those statutes and elect its governing bodies independently. It was also entered in the National Court Register, thereby acquiring legal personality. When the Country Housewives' Associations Act of 9 November 2018 entered into force¹⁵, the legislator amended the Act on Social and Professional Organisations of Farmers by removing the option of establishing Country

12 Article 4 of the Public Benefit and Voluntary Activities Act.

13 OJ 2024, item 263.

14 Article of the Act on Social and Professional Organisations of Farmers OJ 2025, item 781.

15 OJ 2023, item 1179.

Housewives' Associations in the farmers' cooperative formula. As a result, Country Housewives' Associations could continue to operate under the previous rules, but new ones can no longer be established under the Act on Social and Professional Organisations of Farmers (Byszewska et al. 2019, 82).

The dedicated legislation on Country Housewives' Associations was introduced for several reasons: above all, to standardise the legal basis of these organisations, to give them the option of acquiring legal personality (enabling local authorities to award and account for subsidies), and to support their activities in developing rural entrepreneurship and caring for folklore and traditions (*Uzasadnienie do projektu ustawy* 2018, 1).

Voluntary and self-governing status, independence from other social and professional farmers' organisations (including cooperatives), from state administration and local authorities, and the character of a rural civil society are constitutive features of Country Housewives' Associations. The Act also provides for their legal personality. Organisational autonomy and legal personality form the basis for the effective pursuit of their statutory objectives, which can be financed through public subsidies.

The Act also gives examples of tasks for Country Housewives' Associations intended to improve the social and professional position of rural women and their families and to ensure a comprehensive development of rural areas. G. Krawiec points out that, although this is not stated explicitly in the Act, pursuing its objectives implies that promoting equality in rural social relations and non-discrimination on grounds of age and gender are among the tasks of Country Housewives' Associations. The Act also presumes that another of their functions is to counteract social exclusion, as suggested by the duty to act to improve the social and professional situation of women and their families. Broadly defined family-oriented action is another major objective (Krawiec 2021, 19).

Further tasks of the associations include civic, educational, and cultural activities in rural communities, for example organising activities for children and young people, language courses, competitions, concerts, specialist meetings, or craft exhibitions. The phrase 'comprehensive development of rural areas' may be understood to mean that an association's activities can range widely and encompass any aspect of rural social, cultural or economic life (Krawiec 2021, 23). This broad remit includes a wide range of activities connected with safeguarding rural intangible cultural heritage.

To acquire legal personality, an association must be entered in the National Register of Country Housewives' Associations maintained by the Agency for Restructuring and Modernisation of Agriculture. The founding committee files an application for the association's entry into the register, together with its statutes or a declaration that it has adopted the model statutes. The register

is public. A Country Housewives' Association is usually unable to operate without the support of, and cooperation with, other entities; it may therefore make use of public subsidies to finance its activities.

Members' fees and income from activities such as the sale of services or products, and rent or hire of property, are the basic sources of revenue for Country Housewives' Associations (Kobyłski and Śwital 2023, 47). The Act requires that these funds must be used to pursue their statutory objectives.

5 Tasks Related to Safeguarding Intangible Cultural Heritage Realised by Country Housewives' Associations

Civic society organisations are now clearly recognised for their efforts to safeguard cultural heritage (Van der Auwera and Schramme 2011, 61). Cultural heritage, especially intangible heritage, is a manifestation of diversity in both European and national social space. This recognition is reflected in legal provisions requiring the public sector to work with civil society organisations both in defining policies and in implementing specific initiatives to safeguard and promote cultural heritage (Hołda 2019, 132). The role of women and their organisations in supporting the continuity of intangible cultural heritage is also acknowledged (Gittel et al. 2000, 132.).

Country Housewives' Associations, as civil society organisations with particular aims and a broad scope of activity, play an exceptionally important role in safeguarding and transmitting intangible cultural heritage. They may be described as sources of knowledge about local traditions, customs, and skills. In many cases, they are the sole custodians of cultural elements that are increasingly at risk of being forgotten in the face of globalisation and urbanisation.

A total of 13,340 Country Housewives' Associations from across Poland are currently entered in the official register maintained by the Agency for Restructuring and Modernisation of Agriculture. While these associations are subject to statutory ministerial supervision, they take maximum advantage of subsidies to their operations.

In terms of their contribution to the safeguarding of cultural heritage in general, the associations' activities may be grouped in several ways. These include the transmission of knowledge and skills through training and workshops in which participants learn traditional craft techniques, such as embroidery, basket weaving, pottery, cooking regional dishes¹⁶, or making musical instruments. Their efforts to preserve intangible cultural heritage also include educating the

16 Country Housewives' Associations prepare and publish collections of recipes. The internet document base of the National Centre Supporting Development of Rural Areas

younger generation, in cooperation with educational institutions¹⁷. Regional products are a particular example of culinary traditions¹⁸. Fostering rituals and customs is another area of activity¹⁹: associations organise and participate in celebrations and practices connected with the annual cycle or religious holidays. A further example of promoting cultural heritage is found in associations' participation in cultural events, fairs, or bazaars where skills and products are demonstrated (Countryside Support Foundation 2011, 119–144).

6 Conclusion

There is good reason to say that women in rural areas were exceptionally involved in social activities, which contributed to the formation of first Housewives Associations as early as early as the nineteenth century. Their activities, of course, varied across regions and historical periods, and also depended on the seasons and agricultural cycles (Leśniak 2015, 4). Legislation and the financial position of Country Housewives' Associations undoubtedly affected the level of their activity. Interest in the rural women's communities can now be seen to be growing, both among public authorities and non-governmental organisations. Following the 2018 legal changes that strengthened the position of Country Housewives' Associations, public authorities charged with safeguarding cultural heritage have come to view them as important partners influencing both local community activity and the identification and preservation of intangible cultural achievements. The standing of Country Housewives' Associations also appears to be reinforced through cooperation with local and regional authorities, for example in promoting culinary traditions and recording intangible heritage in publications²⁰.

contains a general presentation of culinary traditions in the Mazovian region; see: https://ksow.pl/files/Bazy/Biblioteka/files/Ksiazka_kucharska_KGW1.pdf [accessed 11 Feb. 2026].

17 Grants arranged by the Polish–American Freedom Foundation and dedicated to Country Housewives' Associations as part of the programme To Equal Opportunities, which fund initiatives supporting young people from small locations, are an example; see more at: <https://rownacszanse.pl/inspirations/skad-dokad/> [accessed 11 Feb. 2026].

18 Women's Gallery, a forum for good practice sharing by non-governmental organisations active in rural areas; see: https://ksow.pl/files/Bazy/Biblioteka/files/Babiniec_Katalog_dobrych_praktyk.pdf [accessed 11 Feb. 2026].

19 For traditions related to festivals, see: <https://samorząd.gov.pl/web/powiat-konecki/wielkanocne-sniadanie-zaczynijmy-ab-ovo-z-kolem-gospodyn-wiejskich-w-przylogach> [accessed 11 Feb. 2026].

20 Available at: <https://www.lubelskie.pl/kgw-kola-gospodyn-wiejskich> [accessed 11 Feb. 2026].

At the national level, the competition for Country Housewives' Associations organised by the Chancellery of the President of the Republic of Poland, under the patronage of the First Lady²¹, is an example of recognition for the role of women's organisations. Its first edition was held in 2021 and focused on regional marriage and wedding customs and rituals. A total of 146 Country Housewives' Associations took part (Chancellery of the President 2023, 142–147).

References

- Adamowski, Jan and Smyk, Katarzyna. "Niematerialne dziedzictwo kulturowe – teoria i praktyka", in *Niematerialne dziedzictwo kulturowe: źródła-wartości-ochrona*, ed. by Adamowski and Smyk. Lublin–Warszawa: Wydawnictwo MCSU, 2013: 9–20.
- Blake, Janet. *Commentary on the UNESCO 2003 Convention on the Safeguarding of the Intangible Cultural Heritage*, Leicester, 2006.
- Byszewska, Izabella, Klepacz, Justyna, Lipiński, Krzysztof, Trudnowska, Karolina and Zwoliński, Jan. *Lokalne, regionalne i tradycyjne szansą dla Kół Gospodyń Wiejskich*. Warszawa: Fundacja Europejski Fundusz Rozwoju Wsi Polskiej, 2019.
- Frączak, Piotr. "Historia kół gospodyń wiejskich – między emancypacją a kolonizacją wsi", *Trzeci Sektor*, no. 3 (2021): 43–56.
- Fundacja Wspomagania Wsi. *Rzecz o dziedzictwie na wsi. Rady, przykłady, informacje*. Warszawa: Fundacja Wspomagania Wsi, 2011.
- Fundowicz, Sławomir. *Decentralizacja administracji publicznej*. Lublin: Wydawnictwo KUL, 2005.
- Gittel, Marylin, Ortega-Bustamante, Isolda, and Tracy, Steffy. "Social Capital and Social Change: Womens Community Activism", *Urban Affairs Review*, no. 36/2 (2000): 123–147.
- Hołda, Renata. "Dziedzictwo kulturowe w aktywizacji społeczeństwa obywatelskiego", in *Współpraca uczelni wyższych i organizacji pozarządowych jako animatorów społeczeństwa obywatelskiego z wykorzystaniem potencjału dziedzictwa kulturowego*, ed. by Banaś, Czech, Kołaczek. Kraków: Księgarnia Akademicka, 2019: 127–144.
- Kancelaria Prezydenta Rzeczypospolitej Polskiej. *Regionalne zwyczaje oraz obrzędy ślubne i zwyczajowe*, Warszawa, 2023. Available at: <https://www.prezydent.pl/malzonka-prezydenta/inicjatywy/konkurs-dla-kol-gospodyn-wiejskich-o-nagrade-malzonki-prezydenta-rp/publikacja> [accessed 12 Sept. 2024].

21 Available at: <https://www.prezydent.pl/malzonka-prezydenta/inicjatywy/konkurs-dla-kol-gospodyn-wiejskich-o-nagrade-malzonki-prezydenta-rp> [accessed 11 Feb. 2026].

- Kobyłski, Piotr, and Śwital, Paweł. "Koła Gospodyń Wiejskich jako instrument aktywności lokalnej – aspekty prawne i finansowe działalności", *Samorząd Terytorialny*, no. 3 (2023): 39–47.
- Council conclusions on participatory governance of cultural heritage, (2014/C463/01). Available at: [https://eur-lex.europa.eu/legal-content/PL/TXT/PDF/?uri=CELEX:52014XG1223\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/PL/TXT/PDF/?uri=CELEX:52014XG1223(01)&from=EN) [accessed 12 Sept. 2024].
- Krawiec, Grzegorz. *Ustawa o kołach gospodyń wiejskich. Komentarz*. Warszawa, 2012.
- Mencwel, Jan, Milczewska, Katarzyna, and Wiśniewski, Jan. *Koła Gospodyń Wiejskich. Nie tylko od kuchni*. Warszawa: Pracownia Badań i Innowacji Społecznych "Stocznia", 2014.
- Niewęgłowski, Adrian, Poźniak-Niedzielska, Maria, and Przyborowska-Klimczak, Anna. *Ochrona niematerialnego dziedzictwa kulturowego*. Warszawa: Wolters Kluwer, 2015.
- Prezydent Rzeczypospolitej Polskiej, *Z historii Kół Gospodyń Wiejskich*. Available at: <https://www.prezydent.pl/malzonka-prezydenta/inicjatywy/konkurs-dla-kol-gospodyn-wiejskich-o-nagrode-malzonki-prezydenta-rp/z-historii-kol-gospodyn-wiejskich> [accessed 12 Sept. 2024].
- Przyborowska-Klimczak, Anna. *Rozwój ochrony dziedzictwa kulturalnego w prawie międzynarodowym na przełomie XX i XXI wieku*. Lublin: Wydawnictwo MCSU, 2011.
- Suski, Paweł. *Stowarzyszenia i fundacje. Zagadnienia wybrane*. Warszawa: Wolters Kluwer, 2018.
- Środa, Magdalena. *Kobiety i władza*. Warszawa: Wydawnictwo W.A.B., 2019.
- Van der Auwera, Sigrid, and Schramme, Annik. "Civil Society Action in The Field of Cultural Heritage", *Heritage & Society*, no. 4 (2011): 59–82.
- Zajko-Czochańska, Justyna. "Koła Gospodyń Wiejskich na łamach 'Przyjaciółki' w początkach lat 60. XX wieku", in *Polityka i politycy w prasie XX i XXI wieku. Prasa organizacji politycznych*, ed. by Dajnowicz, Miodowski. Białystok: Wydawnictwo HUMANICA, 2017: 85–92.
- Zalasińska, Katarzyna. "Decentralizacja w systemie ochrony zabytków", *Samorząd Terytorialny*, no. 6 (2022): 11–20.
- Zeidler, Kamil. *Prawo ochrony dziedzictwa kultury*. Warszawa: Wolters Kluwer Business, 2007.

The Right to Cultivate Customs and the Protection of Intangible Cultural Heritage

Miroslaw Kopeć

Abstract This paper represents an attempt to identify legal foundations for the right to cultivate customs as set out in normative acts of at least statutory rank. Defining this legal framework is a starting point for a continued discussion, since changing social realities will sooner or later require the legislator to consider the scope of this right. This is unlikely to be driven by recently adopted popular customs, such as the increasingly widespread celebration of Halloween. More pressing questions may arise when certain customary practices conflict with binding domestic law or fundamental rights, such as polygamy as practiced by some Muslims. The permissible scope to cultivate customs – the subject of this paper – may become particularly topical.

Keywords custom – right to cultivate customs – constitutional law – international law

1 Introduction

Determining the foundations and scope of the right to cultivate customs is a particularly topical issue. Ongoing debates on the relocation or admission of refugees, and the increasing freedom of travel and settlement, raise the question of how far this right extends and whether, in practice, it risks tolerating customs that conflict with values recognised in the domestic legal order – for example, practices involving polygamy, unequal treatment of women, or claims advanced on religious grounds. Applying a formal-dogmatic method, one may conclude that the right to cultivate customs is framed very broadly, and that a debate on possible limitations, in the context of population movement, may become necessary in the not-too-distant future.

When attempting to determine the legal foundations of the cultivation of customs, the notion of ‘custom’ must first be clarified. Definition is difficult, as no standard, universally acceptable definition has been developed across the legal system. Nor does the legislator offer a definition that could be employed system-wide *per analogiam*. This does not mean, however, that the term is absent from legislation: it appears in constitutional, civil, and administrative

law. Custom is also relevant in penal (Kubiak 2015, 82–110), tax (Strzelec 2013, 42–44), and labour law (Culepa 2024, Lex el. 12 Nov. 2024).

As no statutory definition of ‘custom’ is available, it is necessary to resort to its dictionary meaning. J. Bralczyk defines custom as universally accepted, traditional conduct in certain circumstances, and as behaviour characteristic of a person (Bralczyk 2007, 1017). S. Linde defined custom as a habit – something one is accustomed to – customary behaviour or conduct; and as a generally adopted usage or way of acting (Linde 1860, 1197). Further definitions are offered by S. Skorupka et al. and B. Dunaj, who understand it as a manner of acting or conduct arising from an acquired disposition or habit; and what has been entrenched by tradition and is generally accepted within a community (Skorupka et al. 1968, 1026; Dunaj 2000, 443).

In the light of these dictionary definitions, custom may be understood as a generally accepted way of acting in certain circumstances, usually reinforced by tradition and characteristic of a given community, area, or period. Similar definitions are offered by other authors (Szymczak 1989, 1077; Dubisz 2003, 778).

In all the dictionary definitions, insofar as ‘custom’ relates to a given community, it is construed as conduct that is universally acceptable and arising from tradition. These three elements recur in the definitions above and constitute the essence of the concept. For the purposes of this article, ‘custom’ will be understood broadly, that is, as including such near-synonyms as rite, ritual, or practice. Conduct in accordance with customs will be regarded as ‘cultivating customs’.

Custom has a normative meaning, since the legislator uses the concept or associates it with certain legal consequences. Due to space constraints, these relationships between custom and particular branches or fields of law will be omitted. Answering the question of the legal grounds for cultivating customs is important. If it is legally permissible, then no branch or field of law – especially penal or administrative – will be able to ban behaviour of this kind, which will instead have to be regulated, for example, by exempting liability for offences or crimes.

Customs are part of culture, understood as the entire achievement of humankind created in all, or a specific part, of historical development. It is also everything created by human work and thought – for instance, customs, work methods, or tools (Bańko 2000, 731). Culture is treated as all the spiritual and material achievements of humankind created at the successive stages of historical development and continually strengthened and enriched (Kopaliński 1970, 419). There is no doubt that customs existing in Poland, with which the nation identifies, are part of Polish culture. One can speak not only

of national, regional, or local culture: multiple social groups create cultures of their own. Every family has its own peculiar customs. Every Church has its customs, as do various professional groups, for example, miners, lawyers, medical doctors, or soldiers. The richest cultural content is connected with territorial collectives, tribes, and ethnic and national groups. It should be emphasised that transnational cultures also exist, specific to at least several states, for instance European, Asian, or Islamic cultures (Sztompka 2005, 234). Cultures are evidenced by their creations or cultural heritage – a very broad notion encompassing the entire spiritual and material achievements of a given social group (Pruszyński 2002, 131).

2 The Polish Constitution

The Polish Constitution underlines the significance of culture for the entire nation as early as its preamble¹. It expresses gratitude to previous generations for the culture they have passed down, rooted in the Christian heritage of the nation and in universal human values. The preamble to the Constitution states:

Having regard for the existence and future of our Homeland, which recovered, in 1989, the possibility of a sovereign and democratic determination of its fate, we, the Polish Nation – all the citizens of the Republic, both those who believe in God as the source of truth, justice, good and beauty, as well as those not sharing such faith [...] beholden to our ancestors for their labours, their struggle for independence achieved at great sacrifice, for our culture rooted in the Christian heritage of the Nation and in universal human values [...].

The culture of earlier generations can be therefore be assumed to constitute an asset of the whole nation. The preamble to the Polish Constitution also speaks of the undertaking to pass anything that is valuable in more than a millennium of achievements to future generations.

The preamble, albeit without defining legal norms directly, undoubtedly sets the line of legal interpretation and institutional development. Thus, the Polish Constitution and its preamble have a normative dimension as well (on the significance of preambles to normative acts, cf. Wróblewski 1987, 28). It is worth adding that it is already the preamble that sketches the extensive historical context of the constitutional act and identifies tradition and culture as determinants of present constitutional solutions (Chmaj 2009, 27).

¹ The Constitution of the Republic of Poland dated 2 April 1997, OJ No. 78, item 483 as amended.

The preamble follows immediately after the title, 'The Constitution of the Republic of Poland'. On a systemic interpretation, this placement formally accords it a rank equal to that of the provisions in the principal part of the Constitution (Szpor 2001, 3). The reference to the culture of earlier generations suggests that the legislator, in enacting laws, and the state authorities that apply them, will respect this culture.

This is corroborated by Article 5 of the Polish Constitution, which stipulates that the Republic of Poland safeguards the national heritage. This duty is a principal line of the state's activities, and the provision implies a clear and continued obligation on all parts of the public administration to take certain actions (Skrzydło 2002, 17). These actions should aim to protect the nation's cultural heritage against any detriment or threat (Nieć 1980, 143). There be no doubt that, since the legislator and the public administration are charged with protecting cultural heritage, this implies a right to cultivate customs as part of that heritage.

Further analysis of the Polish Constitution points to Article 6(1), which states that the Republic of Poland shall provide for the dissemination of, and equal access to, cultural assets as a source of the Polish nation's identity, survival, and development. This provision concerns a part of cultural heritage, namely cultural assets. They may be material, for instance monuments, or intangible, for instance tales, legends, or customs. Article 6(1) of the Constitution stresses the important role of culture in shaping national identity, as the foundation of the survival and continuing development of every nation, through the patriotic education of society and the promotion of civic attitudes (Polak 2000, 227). National heritage determines national identity. As Z. Ziemiński points out, 'cultural heritage, a nation's bonding element, builds an appropriate attitude to historic events, places or persons of weight to a nation' (Ziemiński 1995, 28).

Article 6(2) of the Polish Constitution lays down a duty to assist Poles living abroad in preserving their links with the national cultural heritage. It has been emphasised that Article 6 speaks of the nation in its ethnic sense, namely, as a historically emerging, permanent community connected by a single language, history, and culture, expressed in the conscious national bond of its members (Łukaszewicz 1975, 108).

A systemic interpretation, in particular a *rubica* (Ziemiński 2002, 240) of Articles 5 and 6 of the Constitution, leads to the conclusion the protection of cultural heritage is a fundamental duty of the Polish state. Among the important issues governed by the constitutional act, cultural heritage has attained such a rank that it is addressed in the opening sections of the Constitution. Thus, it is treated as one of the values that deserves special protection and attention (Zeidler 2007, 28).

Article 73 stipulates all persons shall enjoy the freedom of artistic creation, research and publication of its results, the freedom of teaching, and the freedom to use cultural assets. This constitutional guarantee allows, on the one hand, for active participation in building the national cultural heritage, and, on the other, ensures free and universal access to the legacy of past generations. T. Kotarbiński divides culture into the spiritual, meaning mental sublimations, and the material, including all external, instrumental achievements (Kotarbiński 1970, 95). It has already been shown that intangible cultural heritage comprises the world of human imagination and its creations. It also encompasses tradition, understood as certain views, customs, and information passed down through generations, which may continue to be recorded afterwards. Cultural heritage is also a set of ideas, feelings, and responses transferred from past to future generations.

The Polish Constitution guarantees the freedom to use cultural assets. If the Constitution permits the use of cultural assets – including customs as their intangible element – this freedom should be taken into account when interpreting any regulations other than the Constitution. Other legal provisions, including administrative or penal laws, cannot prohibit it.

Such a conclusion can also be derived from Article 35 of the Polish Constitution. Its Section 1 provides that the Republic of Poland shall assure to Polish citizens who are members of national and ethnic minorities the freedom to preserve and develop their language, customs, and traditions, as well as to develop their own culture. Under Article 35(2) of the Constitution, national and ethnic minorities have the right to establish their own educational and cultural institutions, as well as institutions helping to protect religious identity, and to be involved in resolving matters concerning their cultural identity (Skrzydło 2009, 40). The state's care and protection thus extend to holders of Polish citizenship who belong to national and ethnic minorities. Poland provides them with the freedom to preserve and develop their language, customs, and traditions, and to develop their native culture. This principle is recognised by international law guaranteeing individual rights, and Poland, as a party to these treaties, is bound to implement and apply them.

Article 35 of the Constitution not only prohibits public authorities from undertaking any unilateral assimilation efforts in relation to national and ethnic minorities, but also guarantees their distinctness, which is to be strengthened. The right to safeguard customs and traditions, and to develop culture, is an aspect of that distinctness. It must be concluded, therefore, that the Constitution pledges the right to preserve customs and traditions and to

develop culture to every citizen², including the members of national and ethnic minorities. The constitutional act does not include any reservations such as ‘unless stipulated otherwise by this Act’, ‘the limits of these freedoms shall be determined by a separate act’, or the equivalent.

3 International Law

The significance of culture to local, national, and international communities is reflected in a number of international treaties to which the Republic of Poland is a party. One example is the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, adopted in Paris on 20 October 2005³ and ratified by Poland on 19 July 2007⁴. Its preamble contains statements in which UNESCO, which convened for its 33rd session in Paris from 3 to 21 October 2005, declares cultural diversity is inherent to humankind, constitutes a shared heritage, and should be respected and protected for the good of all. It creates a rich and varied world, expanding opportunities for choice and laying the foundations for the flourishing of human abilities and values, and is therefore a chief driving force of the continued and sustainable development of communities, peoples, and nations. The preamble also declares that cultural diversity, flourishing under conditions of democracy, tolerance, social justice, and mutual respect among nations and cultures, is necessary for peace and safety at the local, national, and international level. It also emphasises the need to ensure adequate protection and promotion of culture.

The UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, adopted in Paris on 17 October 2003⁵ and ratified by Poland on 8 February 2011⁶, has a title that clearly defines the safeguarding of intangible cultural heritage as its object. The UNESCO General Conference, which met for its thirty-second session in Paris between 29 September and 17 October 2003, referred to the existing international legal instruments on human rights, stressed the far-reaching interdependence between intangible and material cultural heritage and natural heritage, and pointed to serious hazards such as the degradation, extinction, and destruction of intangible cultural heritage if

2 The meaning of the term ‘habit’ is narrower than of ‘custom’. However, ‘tradition’ comprises all customs that designate this concept.

3 The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, below.

4 OJ No. 215, item 1585.

5 The UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage; see below.

6 OJ No. 172, item 1018.

resources are unavailable to protect it. The Conference also underlined the invaluable role of intangible cultural heritage as a factor of bringing people closer, and in promoting sharing and mutual understanding.

Article 2(1) of the UNESCO Convention defines 'intangible cultural heritage' as practices, views, messages, knowledge, and skills, as well as the associated instruments, objects, artifacts, and cultural spaces that communities, groups and, in some cases, individuals recognise as parts of their cultural heritage. This intangible cultural heritage, passed down through generations, is constantly recreated by communities and groups in their relationships with the surroundings, nature, and history, and provides them with a sense of identity and continuity, thus contributing to an enhanced respect for cultural diversity and human creativity. For the purposes of the Convention, attention is focused on intangible cultural heritage that conforms to existing international human rights instruments and meets the requirements of mutual respect among communities, groups, and individuals as well as the principles of sustainable development. Article 2(2)(c) expressly lists customs, rites, and festive rituals among intangible cultural heritage.

Culture is a protected value in the European Union as well. Article 22 of its Charter of Fundamental Rights of 14 December 2007⁷ states that the EU respects cultural, religious, and linguistic diversity. This provision lays the foundations for protecting cultural diversity in the European Union. Its importance, and a declaration of its protection, are additionally adumbrated in Article 167(1) of the Treaty on European Union of 7 February 1992⁸, according to which the EU shall contribute to the flourishing of the Member States' cultures while respecting their national and regional diversity and emphasising the significance of the shared cultural heritage. This regulation is noteworthy in designating not only national, but also regional cultures as assets (Waluch 2004, 27–46; Bąk 2007, 89–95; Krzysztofek 1997, 15).

Article 27 of the International Covenant on Civil and Political Rights (ICCPR), adopted in New York on 19 December 1966 and approved by Poland on 3 March 1977⁹, stipulates that members of ethnic, religious, or language minorities cannot be deprived of the right to their own cultural life, the profession and practice of their religion, and the use of their own language with other members of their group. As in Article 35 of the Polish Constitution, this provision guarantees the rights of ethnic, religious, or language minorities to preserve their cultural life, including their customs. Since minorities enjoy such

7 EU OJ 2007. 303. 1.

8 OJ 2004, No. 90, item 864/2.

9 OJ No. 33, item 167.

a right, the majority holds it as well. The ICCPR guarantees the protection of minority rights, since these social groups, due to their numbers, are especially liable to discrimination and the denial of their distinct character. The protection applies to minorities regardless of the citizenships of their members.

Every person's right to take part in cultural life is stated explicitly in Article 15(1)(a) of the International Covenant on Economic, Social and Cultural Rights, adopted in New York on 19 December 1966 and ratified by Poland on 3 March 1977.¹⁰ Its State Parties recognise the right of all persons to participate in cultural life.

4 Domestic Law

Poland's Act on National and Ethnic Minorities and Regional Language of 6 January 2005¹¹ sets out the rules for preserving and developing the cultural identity of national and ethnic minorities and of regional languages, as well as the methods of implementing the principle of equal treatment regardless of ethnic origin, the tasks and competences of government administration and local government authorities in these areas (Article 1). Under Article 2(1) and (2) of the Act, a national minority is a group of Polish citizens who meet all of the following conditions: they are less numerous than the remaining part of Poland's population; they differ materially from the remaining citizens in their language, culture, or tradition, which they seek to preserve; they are aware of their own historical national community and oriented towards its expression and protection; their ancestors have lived in the territory of present-day Poland for at least one hundred years; and they identify with a nation organised in a state of its own. The following national minorities are recognised: Belorussian, Czech, Lithuanian, German, Armenian, Russian, Slovak, and Jewish. Article 2(3) and (4) of the Act define an ethnic minority as a group of Polish citizens who meet all of the following conditions: they are less numerous than the remaining part of Poland's population; they differ materially from the remaining citizens in their language, culture, or tradition, which they attempt to preserve; they are aware of their own historical national community and oriented towards its expression and protection; their ancestors have lived in the territory of today's Poland for at least one hundred years; and they do not identify with a nation organised in a state of its own. The following ethnic minorities are recognised: Karaites, Lemkos, Roma, and Tartars.

¹⁰ OJ No. 38, item 139.

¹¹ The uniform text: OJ 2005, No. 17, item 141, 'the National and Ethnic Minorities Act'.

Pursuant to Article 18(1) of the Act, public authorities are obliged to take appropriate measures to support activities intended to protect, safeguard, and develop a national and ethnic minority's cultural identity; accordingly, they cannot suppress customs existing within such minorities. National and ethnic minorities have the right to maintain their customs, as guaranteed by Article 35(1) of the Polish Constitution. This entitlement also arises from Article 18(1) of the National and Ethnic Minorities Act, since public authorities are bound to assist these minorities in preserving their traditions (including customs). Moreover, Article 5(1) of the National and Ethnic Minorities Act prohibits the use of measures designed to assimilate minorities if such measures are applied against their will. Penal law provisions therefore cannot be used to compel members of national or ethnic minorities to abandon the cultivation of their customs.

The National and Ethnic Minorities Act applies only to members of such minorities who are Polish citizens, and not to national or ethnic minorities not enumerated in the Act. If a custom displaying features of a prohibited act exists within the culture of a national or ethnic minority to which the provisions of the Act do not apply, that group must seek grounds for its actions in other regulations.

An *a minore ad maius* interpretation of the Act suggests that if citizens belonging to national or ethnic minorities are entitled to preserve their culture, including customs, then the remaining citizens are all the more entitled to exercise this right.

5 Conclusion

The norms of the Polish Constitution, Poland's Act on National and Ethnic Minorities, and international law all protect existing customs as parts of intangible cultural heritage, while the enjoyment of cultural assets is a universally acknowledged right of every human being. By allowing conduct in compliance with existing customs, the legislator refers to their content. The objective scope of the right to cultivate customs undoubtedly goes beyond the cultural heritage of the Polish nation. The right also applies to national or ethnic minorities. Thus, its scope is very extensive.

This leaves considerable freedom. No clear limits are set to this right, however, particularly under international law. It may be liable to abuse by those who, for any reason, choose Poland for their permanent residence. Their culture, especially their customs, may differ significantly from our values and may conflict with legal norms, particularly those of the penal law. This paper is

therefore a contribution to an ongoing discussion, especially concerning the introduction of a general proviso that customs must conform to the fundamental values of our country and the principles of our legal system.

In order to propose specific mechanisms for addressing the issue of customs cultivated by foreigners who may arrive in Poland, the extent of this right should first be defined. Only then can it be restricted. The foregoing discussion is thus intended as a contribution to further debate. It can be noted, however, that the right to cultivate customs, including by incoming populations, is very extensive and already guaranteed in constitutional law. It may therefore be expected that this right will need to be limited in future; continued discussion of the problem may answer the question of how far-reaching such restrictions should be, in both subjective and objective terms. Appropriate mechanisms should be in place in the near future, to be applied when needed.

References

- Bańko, Mirosław. *Inny słownik języka polskiego*, vol. 2. Warszawa: Wydawnictwo Naukowe PWN, 2000.
- Bąk, Stanisław. *Działania Unii Europejskiej na rzecz kultury i turystyki kulturalnej*. Warszawa: Wydawnictwo Difin, 2007.
- Bralczyk, Jerzy. *Słownik 100 tysięcy potrzebnych słów*. Warszawa: Wydawnictwo Naukowe PWN, 2007.
- Chmaj, Marek. "Konstytucyjne podstawy ochrony dóbr kultury", in Gardocka, Teresa and Sobczak, Jacek (ed.), *Prawna ochrona dóbr kultury*. Toruń: Wydawnictwo Adam Marszałek, 2009.
- Culepa, Michał. *Świadczenia chorobowe na przełomie roku*. LEX el, 2004.
- Dubisz, Stanisław. *Uniwersalny słownik języka polskiego*, vol. 5. Warszawa: Wydawnictwo Naukowe PWN, 2003.
- Dunaj, Bogusław. *Słownik współczesnego języka polskiego*, vol. 5. Kraków: Wydawnictwo SMS, 2000.
- Kopaliński, Władysław. *Słownik wyrazów obcych i zwrotów obcojęzycznych*. Warszawa: Wydawnictwo Związkowe CRZZ, 1970.
- Kotarbiński, Tadeusz. *Sprawność i błąd: (z myślą o dobrej robocie nauczyciela)*. Warszawa: Państwowe Wydawnictwo Naukowe, 1970.
- Krzysztofek, Kazimierz. "Kultura i integracja europejska. Implikacje dla Polski", *Studia Europejskie* no. 3 (1997): 11–26.
- Kubiak, Rafał. "Czy istnieje 'kontratyp zwyczaju'?" *Prokuratura i Prawo* no. 7–8 (2015): 82–110.

- Linde, Samuel. *Słownik języka polskiego*, vol. 6. Lwów: Zakład Narodowy im. Ossolińskich, 1860.
- Łukaszewicz, Łukasz. "Cele działalności kulturalnej zrzeszeń polonijnych", *Przegląd Zachodni* no. 5–6 (1975): 98–120.
- Nieć, Halina. *Ojczyzna dzieła sztuki. Międzynarodowa ochrona integralności narodowej spuścizny kulturalnej*. Warszawa–Kraków: Państwowe Wydawnictwo Naukowe, 1980.
- Polak, Tadeusz. *Dziedzictwo kulturalne źródłem tożsamości narodowej*. Warszawa: Wydawnictwo Narodowe Centrum Kultury, 2000.
- Pruszyński, Jerzy. "Dziedzictwo kultury w świetle Konstytucji Rzeczypospolitej z 2 kwietnia 1997 roku", in *Konstytucja RP i władza we współczesnym świecie. Doktryna, Prawo, Praktyka*, ed. by M. Kruk, J. Trzcinski, and J. Wawrzyniak. Warszawa, Wydawnictwo Naukowe PWN, 2002.
- Skorupka, Stanisław, Anderska, Halina, and Łempicka, Zofia. *Mały słownik języka polskiego*. Warszawa: Państwowe Wydawnictwo Naukowe, 1968.
- Skrzydło, Wiesław. *Konstytucja Rzeczypospolitej Polskiej. Komentarz*. Warszawa: Wolters Kluwer Polska, 2002.
- Skrzydło, Wiesław. *Konstytucja Rzeczypospolitej Polskiej. Komentarz*. Warszawa: Wolters Kluwer Polska, 2009.
- Strzelec, Dariusz. "Wykładnia językowa, celowościowa i systemowa przepisów o dochodach nieujawnionych. Glosa do wyroku NSA z dnia 4 kwietnia 2012 r., II FSK 1807/10". *Przegląd Podatkowy*, no. 2 (2013): 35–52.
- Szpor, Andrzej. "Państwo a subsydiarność jako zasada w UE i w Polsce", *Samorząd Terytorialny*, no. 1–2 (2001): 3–19.
- Sztompka, Piotr. *Socjologia*. Kraków: Wydawnictwo ZNAK, 2005.
- Szymczak, Mieczysław. *Słownik języka polskiego*, vol. III. Warszawa: Polskie Wydawnictwo Naukowe, 1989.
- Waluch, Kazimierz. *Polityka kulturalna Unii Europejskiej*. Płock: Wydawnictwo Novum, 2004.
- Wronkowska, Sławomira, and Zmierczak, Maria. *Kompendium wiedzy o społeczeństwie, państwie i prawie*. Warszawa–Poznań: Wydawnictwo PWN, 1995.
- Wróblewski, Jerzy. "Uzasadnienie aktu normatywnego", *Państwo i Prawo*, no. 1 (1987): 22–38.
- Zeidler, Kamil. *Prawo ochrony dziedzictwa kultury*. Warszawa: Wolters Kluwer Polska, 2007.
- Ziemiński, Zygmunt. *Logika praktyczna*. Warszawa: Wydawnictwo Szkolne i Pedagogiczne, 2002.

Challenges in the Protection of Cultural Institutions and Supporting Their Accessibility



Digitalisation of Cultural Assets as a Determinant of Cultural Heritage Protection

Digital Access to Knowledge About Historic Monuments: Technological Challenges and Cybersecurity

Dominika Skoczylas

Abstract Institutions tasked with the protection of cultural heritage are making increasing use of information and communications technologies to enhance access to information about cultural assets. The digital transformation paves the way for changes intended to broaden access to information about historic monuments, while rolling out innovative and varied tools for this purpose. At present, they include both advanced digitalisation and artificial intelligence systems.

It is my intention to identify how digital transformation affects the digitalisation of cultural assets and the modernisation of digital services provided by institutions charged with the protection of cultural assets. The digital accessibility of knowledge about historic monuments also needs to be addressed. The digitalisation of cultural assets is now a determinant of cultural heritage protection. This analysis, however, leads to the issue of cyber security. Legal and technological systemic instruments that are robust against cyber risks need to be implemented to ensure the continued and secure processing and management of datasets on historic monuments. In this connection, Commission Recommendation (EU) 2021/1970 of 10 November 2021 on a common European data space for cultural heritage, as well as national programmes concerning the digitalisation and accessibility of digital cultural assets, should be reviewed. The research method involves an analysis of fundamental legal acts with reference to specialist literature.

Keywords cybersecurity – digitalisation – digital accessibility – protection of cultural heritage – historic monuments

1 Introduction

Globalisation and prevailing cosmopolitan attitudes can be said to contribute to the fading of national identities and, with them, traditions, culture, or customs recognised by communities and passed down through generations. This is especially worrying insofar as it may promote anti-axiological models

connected to processes of dehumanisation and a rejection of respect for certain attitudes and cultural assets. Nevertheless, some advantages of international integration should be noted, including more intense competition in the service market, the possibility of unlimited interpersonal communication, and the application of state-of-the-art information and communications technologies. In other words, a cosmopolitan attitude does not rule out respect for cultural achievements. As noted by J. Nikitorowicz: 'Someone seeing and interpreting the world in heterologous terms is capable of combining citizenship and national, state, European, or civilisational patriotism while regarding cosmopolitanism as the idea of equal goodwill towards all native lands' (Nikitorowicz 2017, 32). Cultural assets are national treasures and must therefore be protected by the state and its citizens and, as civilisational assets, by every human being.

The protection of cultural assets is connected to the notion of cultural heritage, that is, 'the part of old cultural assets found valuable by successive generations that have survived to the present as a result' (Kobyliński 2011, 22). Special protection applies both to so-called tangible assets (objects that are a material expression of human creativity) and intangible assets (spiritual and intellectual heritage, for example traditions, rituals, or language) (Frankiewicz 2012, 12–13). The significance of national heritage is emphasised in the Polish Constitution¹. Its preamble states: 'We, the Polish Nation – all citizens of the Republic [...] beholden to our ancestors [...] for our culture rooted in the Christian heritage of the Nation and in universal human values, recalling the best traditions of the First and the Second Republics, obliged to bequeath to future generations all that is valuable from our over one thousand years' heritage [...]'. This clearly substantiates the protection of cultural assets by both state institutions – as further stressed in Article 5 of the Constitution ('The Republic of Poland shall [...] safeguard the national heritage') – as well as by the citizens themselves. The state is additionally obliged, under Article 6 of the Constitution, to create conditions for the dissemination of, and equal access to, cultural assets regarded as the source of the Polish nation's identity, survival, and development. There can be no doubt that 'cultural heritage requires memory' (Silverman and Ruggles 2007, 12) – not only architectural (maintenance, restoration, and construction work), but also digital. The digitalisation of cultural assets is now a determinant of cultural heritage protection. Information and communications technologies help to modernise the digital services provided by those engaged in the protection of cultural assets. Moreover, the means

1 The Constitution of the Republic of Poland of 2 April 1997 (OJ No. 78, item 483 as amended), 'the Polish Constitution'.

of public communication enable digital access to information about historic monuments, including for disabled people. They help to categorise and intensify efforts to protect cultural assets. Nonetheless, it is necessary to implement tools that are secure against cyber risks and will ensure the continued processing and management of datasets on historic monuments.

The digitalisation of cultural assets and digital access to knowledge on historic monuments are discussed here. This analysis will help to determine certain assumptions concerning the digitalisation of, and digital access to, cultural assets, and to identify principles for protecting digital cultural heritage resources against cyber threats. This study corroborates that the digitalisation of cultural assets is now a determinant of cultural heritage protection; therefore, the cybersecurity of information and communications technology (ICT) systems and tools used to process and provide access to datasets on cultural assets is a prerequisite for the digital availability of knowledge about historic monuments. Commission Recommendation (EU) 2021/1970 of 10 November 2021 on a common European data space for cultural heritage², as well as national programmes concerning the digitalisation and availability of digital cultural assets, are reviewed. The research method of choice is an analysis of major legislation based on specialist literature.

2 Digitalisation of Cultural Assets

Assuming that the protection of cultural heritage concerns both present and future generations, the issue of digitalisation (that is, the conversion of resources from analogue into digital format)³ of cultural assets is worth considering. State-of-the-art information and communications technologies may make information about historic monuments more accessible (cognitive objectives), but may also facilitate the so-called restitution of cultural assets. This applies in particular to monuments, that is, immovable or moveable assets, their parts or ensembles, made by people and relating to their activities, which are evidence of past eras or events and whose preservation is in public interest due to their historic, artistic, or scientific value⁴. The digitalisation of cultural assets is in principle viewed positively, although sceptics point out that 'electronic information and communications techniques are indeed

2 EU OJ No. 401, item 5, 'the Commission Recommendation (EU) 2021/1970'.

3 Cf. Article 3(5) of the Commission Recommendation (EU) 2021/197.

4 Cf. Article 3(1) of the Act on the Protection and Care of Historic Monuments of 23 July 2003 (OJ 2024, item 1292).

useful instruments [...], yet they should not inculcate passive attitudes and behaviours involving solely or nearly exclusively electronic messages instead of an immediate experience of aesthetic impressions [...]’ (Affelt 2011, 156). Electronic means of communication are, of course, effective media for information about cultural assets, allowing for an appropriate classification (specification) of information and processing of associated data. Digitalisation can be said to emphasise ‘the order of propagating and making available national cultural assets’ implied by the Polish Constitution, which undoubtedly ‘serves the public interest’ (Frankiewicz-Bodynek 2021, 305).

Purely technological aspects are among the advantages of e-sets. System capacity, integrated registers, and automated operation make data gathering more effective. In order to ensure reliable and secure information processing, the conditions of access to registers and cybersecurity rules need to be defined accurately. There are extensive opportunities to use new cloud-computing technologies or to apply advanced ICT tools. The Internet of Things (IoT), machine learning, and artificial intelligence systems have dramatically reshaped thinking about the innovativeness or interoperability of services (Lee and Trimi 2021, 14). Digitalisation is an effective tool for supporting the protection and restitution of national cultural assets. The digitalisation of museum collections and the increasing availability of auction catalogues help to trace cultural assets lost chiefly as a result of armed conflicts⁵.

The social significance of the digitalisation of cultural heritage can be seen in many ways. First, its significance stems from the need to preserve information about cultural assets subject to threats (destruction), whether natural or caused by human activity. As important is the ‘effective advantage to be taken of the cultural heritage’s potential for economic and social development’ (Meshcheryakova and Zueva 2023, 1). Information and communications technologies also help to digitally reconstruct historic monuments. The achievements of artificial intelligence and algorithm-based processes are crucial in this respect. In addition, art that was previously accessible only to a select few has become a universal, inclusive good. This inclusivity forms part of the trend

5 Pursuant to Article 2(2) of the Restitution of National Cultural Assets Act of 25 May 2017 (OJ 2019, item 1591), the restitution of a cultural asset by the Republic of Poland means actions taken by state authorities or other public finance organisations to have recovered or returned a cultural asset lost by a Polish citizen, legal person, or organisation seated in the Republic of Poland, or by an entity established under the laws of a foreign state engaged in the protection or propagation of Polish national heritage, or a cultural asset located, at the time of loss or at a later date, in the Republic of Poland, or to whose return the Republic of Poland is empowered by force of international law, European Union law, or the laws of foreign states; or cultural assets taken out of the Republic of Poland in violation of the law.

towards digital accessibility for people with special needs⁶. Owing to the digitalisation of cultural heritage, public administration authorities, museums, art galleries, scientific and cultural organisations, and even private individuals can exhibit their collections online, arrange virtual exhibitions, and thereby encourage wider exploration of cultural assets. The cognitive potential of the online environment is extraordinarily extensive, for instance, through the use of virtual reality tools as an alternative to traditional museum visits or sight-seeing in person (Gervasi et al. 2022, 500). In other words, the importance of so-called e-tourism grows, with e-tours a result of e-availability of cultural assets.

However, digital accessibility also constitutes a particular challenge. Poland's 2019 Act on the Digital Accessibility of Websites and Mobile Applications of Public Entities⁷ sets out the conditions for digital accessibility of the websites and mobile applications of public entities. It is emphasised, first of all, that accessibility consists in ensuring: functionality (users can take advantage of all the functions offered)⁸, compatibility (a website or application is capable of working with as much software as possible, including tools and programmes assisting the disabled)⁹, perceivability (users can perceive content through hearing, sight, or touch)¹⁰, and comprehensibility (users can understand the content and the manner of its presentation)¹¹. The remaining requirements include the so-called accessibility statement¹² and the provision of alternative access to parts of a website or mobile application¹³. P. Śwital stresses 'the development of new technologies and the universal use of the internet may help to include persons with limited capacities for motion' (Śwital 2023, 219).

6 Article 2(3) of the Act Ensuring Accessibility to People with Special Needs of 19 July 2019 (OJ 2022, item 2240 as amended) defines a person with special needs as someone who, due to their internal or external characteristics or to circumstances they find themselves in, must take extra actions or means to overcome barriers in order to take part in different areas of life on equal footing with others.

7 The Digital Accessibility of Websites and Mobile Applications of Public Entities Act of 4 April 2019 (OJ 2023, item 1440); 'the Digital Accessibility Act'.

8 Cf. Article 4(4) of the Digital Accessibility Act.

9 Cf. Article 4(6) of the Digital Accessibility Act.

10 Cf. Article 4(9) of the Digital Accessibility Act.

11 Cf. Article 4(11) of the Digital Accessibility Act.

12 Pursuant to Article 10(1) of the Digital Accessibility Act, a public entity shall prepare a digitally available declaration of accessibility for each language version of its website or mobile application in the language to which it applies.

13 Pursuant to Article 7(2) of the Digital Accessibility Act, alternative access involves, *inter alia*, provision of a telephone or mail contact, contact by electronic means or via a sign language interpreter or other type of interpreter if the public entity provides such an option.

The above requirements also provide a model of conduct for entities digitising cultural assets and providing online access to resources and information about historic monuments. Importantly, adapting websites to the requirements of digital accessibility entails organisational, technological, and legal action on the part of internet portal administrators. These enable the principle of equal treatment of all potential users of cultural asset e-resources to be realised (Skoczylas 2022, 130). The protection of digital cultural heritage resources is also of interest. Digital culture is a key component of Poland's national development strategy and of the European Union's policy on digital transformation and the protection of cultural heritage.

3 The Legal Foundations of Cultural Asset Digitalisation

Digital transformation has contributed to enhancing the accessibility of information about cultural assets. Digital services open up new opportunities, and the digitalisation of cultural heritage resources supports educational, restitution, and reconstruction efforts. Digitalisation can be said to have given rise to a new type of digital cultural heritage. Moreover, it provides fast and easy access to data processed in ICT systems. It should be also noted that 'the policy of digital conservation is to secure a long-term future of digital heritage [...]' (Erturk 2020, 109). It is therefore unsurprising that the innovation of digital services, digitalisation, and the protection of digital cultural heritage are reflected in EU and national programmes that set standards for cultural asset protection.

Commission Recommendation (EU) 2021/1970 of 10 November 2021 on a common European data space for cultural heritage deserves special attention. Recital 1 states that 'digital technologies offer more effective tools to cultural heritage institutions with which they can digitise cultural heritage assets and reach broader audiences'. The postulate is thus advanced of unlimited accessibility and reuse of cultural assets by the culture, creative, and tourist sectors. The promotion of an inclusive, transparent, and open digital environment of secure, interoperable digital technologies and services available to all, human-centred and based on fundamental rights, is among the primary objectives of the EU policy programme 'Path to the Digital Decade', designed to track progress until 2030.¹⁴

14 Cf. Article 3(1) of the decision of the European Parliament and of the Council (EU) 2022/2481 of 14 December 2022 instituting the policy programme 'Path to the Digital Decade' until 2030, EU OJ No. 323, item 4.

The European Union has noted that information and communications technologies played an important role during the COVID-19 pandemic, including access to cultural assets. The need to create a European digital ecosystem across a variety of public areas and sectors is increasingly emphasised¹⁵. Commission Recommendation (EU) 2021/1970 highlights the role of cultural heritage as the key part of cultural tourism. Cultural heritage is reaffirmed as part of European identity and a major factor contributing to the development of the European economy (recital 4 to Commission Recommendation (EU) 2021/1970). The digitalisation and electronic provision of information about cultural assets, however, require appropriate ICT and system tools, as well as a thorough assessment of potential threats to digital resource processing.

Some undoubtedly beneficial aspects of digital transformation can be noted in the application of various digital technologies that help automate mechanisms for processing data about cultural assets, for instance by organising access to resources. Tools such as 3D technology, artificial intelligence systems, cloud computing, and virtual and expanded reality have, as indicated in recital 8 to Commission Recommendation (EU) 2021/1970, brought 'unprecedented opportunities for digitisation, online access and digital preservation' while enabling 'innovative forms of artistic creation', 'opening up new ways of digitally engaging with and enjoying culture content', and 'automatically identifying cultural goods that are illicitly trafficked'. Digitalisation fosters action to protect and conserve cultural assets. It is an integral part of research and conservation. In particular, accurate data analysis and interpretation allow for information and knowledge sharing among the institutions charged with the protection of cultural assets or monument reconstruction (Kotulski and Kotulska 2023, 75). The digitalisation of cultural assets determines the protection of cultural heritage in several dimensions: socio-economic, information (cognitive), reconstruction-conservation, restitution, and purely touristic.

As far as the Polish legal order is concerned, the National Institute of Cultural Heritage plays a crucial role in the protection of cultural heritage situated in the Republic of Poland. This state cultural institution provides specialist (expert) support for the Ministry of Culture and National Heritage and other institutions engaged in the protection and conservation of historic monuments. The range of the National Institute of Cultural Heritage's duties includes the creation, dissemination, and implementation of standards for historic monument documentation, research, conservation, and digitalisation; the maintenance

15 See the communique of the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of Regions 'Digital Compass for 2030: the European Way for the Digital Decade', COM(2021) 118 final.

of a digital data system about cultural heritage, including geolocation details; and the digitalisation and provision of data on historic monuments in order to promote the values they carry. The National Institute of Cultural Heritage also undertakes IT projects; implements technological changes to the processes of digitalising and documenting historic items; coordinates the gathering, storage, and provision of digital data; sets standards; fosters digitalisation initiatives in monument conservation; provides training for cultural institution staff on the digitalisation of immovable objects; and promotes digital resources¹⁶.

The Competence Centre for the Digitalisation of Monuments coordinates and implements technological changes in the digitalisation and documentation of historic items, including the processing of digital data. The Centre not only contributes to the dissemination of knowledge about historic monuments, but also supports conservation efforts and fosters the digital competences of personnel at cultural institutions. It also creates the so-called central database on historic monuments, ensures taking of digital inventories of historic monuments of key significance to the protection of cultural heritage, and develops a set of good digitalisation practices for those documenting historic architecture and architectural details and fittings by means of digital methods¹⁷.

A few words should now be devoted to a key project of the National Institute of Cultural Heritage, the *Zabytek.pl* website, which is an online repository of information about Polish historic monuments. The platform contains documents, historic monument descriptions, current and archive photos, as well as 3D models of objects. This repository can be seen as an innovative undertaking in the digitalisation of cultural assets. We are indeed witnessing the digitalisation of culture. It should be remembered that, beside purely technological issues, the means of electronic communication 'have opened up the borders between art disciplines, with attention gradually shifting to the process, participation, interaction, and dialogue' (Rutten 2018, 2). It should be reaffirmed here that the digitalisation of cultural assets is also related to the needs of the information society, for which universal access to information is a fundamental value.

Some interesting solutions are suggested in The Strategy for the Social Capital Development (Cooperation, Culture, Creativity) 2030¹⁸. Special atten-

16 Cf. § 5 of the Statutes of the National Institute of Cultural Heritage, an appendix to the ruling of the Minister for Culture and National Heritage of 17 May 2024 establishing the statutes for the National Institute of Cultural Heritage, Dz.Urz.MKiDN.2024.59.

17 Competence Centre for the Digitalisation of Monuments, website available at: <https://nid.pl/centrum-kompetencji-ds-digitalizacji-zabytkow/> [accessed 17 Sept. 2024].

18 Resolution 155 of the Council of Ministers dated 27 October 2020 to adopt 'A Development Strategy for Social Capital (Cooperation, Culture, Creativity) 2030', M.P. 2020 item 1060.

tion should be paid to the specific aim in the strategy of reinforcing the role of culture in building civic identity and attitudes. This comprises the following priorities: creating conditions and building competences for a stronger participation in culture; the protection of cultural heritage; collecting and preserving works of culture; digitalisation, digital reconstruction, and the presentation of cultural assets; reinforcing civic identities and attitudes through culture; and a more intense promotion of Polish culture abroad.

With regard to digitalisation, digital reconstruction, and access to cultural assets, the Strategy proposes actions involving the digitalisation and reuse of digital resources (for example museum, library, historic, or archival resources) for popularisation, education, research, and commercial purposes, as well as more intense efforts to develop digital competences and knowledge of good practices. The need is also noted to build central points of access to cultural, scientific, and administrative resources, and to implement a systemic model of online archiving in Poland. The possibility of reusing the data of cultural institutions is presented as a decisive factor. Open information resources should be complete, up to date, technologically neutral, machine-processable, accessible without licensing restrictions, and provided in open file formats. It must be admitted that 'the opening of public information resources to broader access and reuse' (Sakowska-Baryła 2022, 107) is a positive legal, technological, and financial development, as it envisages non-discriminatory and, in principle, free-of-charge access to digital data while ensuring copyright protection. The detailed rules on data openness, and the rules and procedures for access to and the provision of public sector information for reuse, are set out in Poland's Open Data and Reuse of Public Sector Information Act¹⁹.

Digital technologies can help to improve environmental conditions and contribute to a more effective implementation of the concept of sustainable development. Recital 9 to the Commission Recommendation (EU) 2021/1970 notes that 'cultural heritage assets digitised in 3D can be a source of relevant knowledge on climate-related impact, adaptation and resilience'. The role of technology in 'supporting preventive conservation of cultural heritage monuments, buildings, and sites' is underlined as well. There is no doubt that digitalisation brings measurable benefits to the protection of cultural heritage and to the digital availability of knowledge about historic monuments.

19 Act on Open Data and the Reuse of Public Sector Information of 11 August 2021, OJ 2023, item 1524.

4 Protecting Digital Cultural Heritage Resources – Cybersecurity Policy

With the digitalisation of cultural assets comes a need for more intensive efforts to protect the resulting digital resources against cyber threats. Yet determining standards for cybersecurity policy remains a challenge. There are growing numbers of cyber threats²⁰ that may have serious consequences for data processing (including unauthorised modification or destruction), restrict access to information (malware such as viruses, spy software, Trojan horses), and disrupt the operation of ICT infrastructure (networks, systems, Internet platforms). Thus cybersecurity has become a necessary component of digitalisation. Ensuring subjective and objective protection, achievable through the introduction of cybersecurity policies, is a prerequisite for the security of digitised cultural asset resources. Recital 12 to Commission Recommendation (EU) 2021/1970 states that the effective protection of digital resources requires organisational, technical, and financial action. Protection should cover key resources, such as the most commonly visited historic monuments, and to objects regardless of their stage of digitisation. Ultimately, such protection entails the creation of an integrated cybersecurity system that defines the scope of responsibilities of entities charged with ensuring the digital accessibility of knowledge about historic monuments, as well as preventive and follow-up actions related to cybersecurity (Skoczylas 2023, 65–66).

The protection of digital resources on the macro scale must be understood as a set of actions necessary to locate, represent, use, and explain digital resources in the future²¹. Three key points of cybersecurity need to be highlighted, namely: the preparation of an all-round and forward-looking digital strategy; the application of advanced digital technologies to ensure a more effective process of cultural-asset digitalisation and the protection of digital resources; and the assurance of transnational (European) accessibility, interoperability, and reuse of data. Undeniably, the security of digitalisation depends on ensuring ‘the performance and reliability of all components involved in data processing and storage’ (Eckert and Waidner 2019, 266). These considerations suggest that cybersecurity policies should be based on digitised actions

20 In line with Article 2(8) of the Regulation of the European Parliament and of the Council (EU) 2019/881 of 17 April 2019 on the ENISA (the European Union Agency for Cybersecurity), cybersecurity certification for ICT technologies, and repealing Regulation (EU) 526/2013 (the Cybersecurity Act), EU OJ No. 151, item 15, a cyber threat means any potential circumstances, events, or actions that may harm, cause interference with or otherwise adversely affect IT networks and systems, their users, and others.

21 Cf. Article 3(7) of the Commission Recommendation (EU) 2021/197.

intended to ensure the resilience of information systems to actions violating the confidentiality, integrity, availability, and authenticity of processed data and the related services offered by these systems – consistent with the legal definition of cybersecurity in Poland's National Cybersecurity System Act²².

Commission Recommendation (EU) 2021/1970 clearly indicates that advanced digitalisation and the protection of digital cultural assets requires the implementation of a long-term digital strategy for cultural heritage. Defining technological conditions of digitalisation is also important, in particular through the use of 3D technology, artificial intelligence, extended reality, or cloud processing²³. These actions are assumed to contribute to the realisation of the digital strategy's objectives (the criteria set out in Article 6 of Commission Recommendation (EU) 2021/1970)²⁴. Ensuring digital access to knowledge about historic monuments clearly requires a balance between innovative technological solutions and the limitations and threats present in cyberspace (Smolucha 2024, 103). Collaboration between cultural institutions, the tourism sector, educational organisations, and public administration authorities is also important, both at national and international levels. It is no coincidence that the European Union has suggested guidelines on a common European data space for cultural heritage, particularly as part of promoting sustainable cultural tourism and assisting in identifying cultural assets involved in illicit trade²⁵. Cybersecurity policy can thus contribute to the sharing of digital content (by providing digitised resources), data reuse, and the restitution of cultural assets.

5 Conclusion

The current digitalisation of cultural assets is a determinant in the protection of cultural heritage. Ensuring the cybersecurity of ITC systems and tools used to process and provide datasets on cultural assets is a prerequisite for the digital accessibility of knowledge about historic monuments. This requires the implementation of legal and technological systemic tools that are robust against

22 Cf. Article 2(4) of the National Cybersecurity System Act of 5 July 2018, OJ of 2024, items 1077, 1222.

23 Cf. Articles 4 and 5 of Commission Recommendation (EU) 2021/197.

24 By 2030, Member States should have digitised in 3D all historic monuments and items of cultural heritage that are jeopardised, as well as 50 per cent of the most visited historic monuments, buildings, and cultural and cultural-heritage objects. By 2025, 40 per cent of these targets should have been digitised.

25 Cf. Article 17 of Commission Recommendation (EU) 2021/197.

cyber threats. Advanced digitalisation increases the availability of information on cultural assets, constituting an important element of sustainable cultural tourism, and supports the postulate of equal access to information for people with special needs. A further advantage of digitalisation is the possibility of preserving information about cultural assets exposed to risks, enabling their reconstruction in the future. It also supports socio-economic development. Moreover, by creating repositories of knowledge, it may assist in the restitution of cultural assets. It is therefore unsurprising that questions of restitution feature in national programmes concerning the digitalisation and accessibility of digital cultural assets.

Commission Recommendation (EU) 2021/1970 of 10 November 2021 on a common European data space for cultural heritage is a crucial instrument in this regard. It must be stressed that the implementation of advanced digital technologies, ensuring the availability, interoperability, and reuse of data on a European transnational scale, implies the need for effective processes of digitalisation as well as the protection of digital resources. This again raises the question of comprehensive cybersecurity, and of organisational, legal, technological, and financial measures. These necessary undertakings underscore the need to protect against cyber risks, as well as the principles of responsibility and the duties of those administering digitised cultural assets.

References

- Affelt, Waldemar. "Dziedzictwo transformowane: od autentycznych wrażeń do wirtualnej nudy", in *System ochrony zabytków w Polsce – analiza, diagnoza, propozycje*, ed. by Bogusław Szmygin. Lublin–Warszawa: Polski Komitet Narodowy ICOMOS, 2011: 139–161.
- Eckert, Claudia, and Waidner, Michael. "Safety and Security. Cybersecurity as the basis for successful digitization", in *Digital Transformation*, ed. by Reimund Neugebauer. Berlin–Heidelberg: Springer Vieweg, 2019: 265–283.
- Erturk, Nevra. "Preservation of Digitized Intangible Cultural Heritage in Museum Storage", *Milli Folklor*, vol. 16, no. 128 (2020): 100–110.
- Frankiewicz, Anna. "Znaczenie prawne regulacji dziedzictwa narodowego i dóbr kulturowych rozdziale I Konstytucji RP", *Przegląd Prawa i Administracji* 88 (2012): 9–22.
- Frankiewicz-Bodynek, Anna. "Realizacja zasady równości w zakresie dostępu do kultury narodowej", *Przegląd Prawa Konstytucyjnego* 5 (63) (2021): 295–306.
- Gervasi, Osvaldo, Perri, Damiano, Simonetti, Marco, and Tasso, Sergio. "Strategies for the Digitalization of Cultural Heritage", in *Computational Science and Its Applications – ICCSA 2022 Workshops. ICCSA 2022. Lecture Notes in Computer Science*, vol 13382, ed.

- by Osvaldo Gervasi, Beniamino Murgante, Sanjay Misra, Ana Maria A. C. Rocha, and Chiara Garau. Cham: Springer International Publishing, 2022: 486–502.
- Kobyliński, Zbigniew. "Czym jest, komu jest potrzebne i do kogo należy dziedzictwo kulturowe?", *Mazowsze. Studia Regionalne* 7 (2011): 21–47.
- Kotulski, Mariusz and Kotulska, Joanna. "Digitization of cultural heritage as a form of its protection", in *Public policy, governance and communications in the EU member states and candidate countries: post-conference monograph*, ed. by Valentina Burksiene, Marek Mączyński, Bogdana Neamtu, Iwona Niżnik-Dobosz, Gennadii Riabtsev and Valerii Tertychka. Kyiv: NaUKMA, 2023: 63–77.
- Lee, Sang M., and Trimi, Silvana. "Convergence innovation in the digital age and in the COVID-19 pandemic crisis", *Journal of Business Research* 123 (2021): 14–22.
- Meshcheryakova, Tatiana, and Zueva, Elena. "The mechanism for managing cultural heritage objects, taking into account the possibilities of the digital environment", *E3S Web of Conferences* 389, 06031 (2023): 1–11.
- Nikitorowicz, Jerzy. "Edukacja międzykulturowa w procesie przeciwstawiania się dehumanizacji i infraculturalizacji", *Edukacja międzykulturowa* 1 (6) (2017): 19–35.
- Rutten, Kris. "Participation, Art and Digital Culture", *Critical Arts* 32 (3) (2018): 1–8.
- Sakowska-Baryła, Marlena. "Otwarte dane i ponowne wykorzystywanie informacji sektora publicznego – nowoczesne narzędzia zapewniania konstytucyjnej zasady równego dostępu do dóbr kultury", *Annales Universitatis Paedagogicae Cracoviensis Studia de Cultura* 14 (1) (2022): 96–117.
- Silverman, Helaine, and Ruggles, D. Fairchild. "Cultural Heritage and Human Rights", in *Cultural Heritage and Human Rights*, ed. by Helaine Silverman and D. Fairchild Ruggles. New York: Springer New York, 2007: 3–22.
- Skoczylas, Dominika. "Dostępność cyfrowa determinantą zmian w funkcjonowaniu administracji publicznej?", *Studia Administracji i Bezpieczeństwa* 13 (13) (2022): 121–132.
- Skoczylas, Dominika. *Krajowy system cyberbezpieczeństwa*. Warszawa: Wydawnictwo C.H. Beck, 2023.
- Smołucha, Danuta. "Dziedzictwo kulturowe w Internecie – szanse i zagrożenia. Kilka przypadków błędnej recepcji sztuki w Internecie", *The Ignatianum Philosophical Yearbook*, vol. 30, no. 1 (2024): 91–106.
- Śwital, Paweł. "Prawne uwarunkowania włączenia osób z niepełnosprawnościami ruchowymi w procesy partycypacji społecznej w Polsce", *Biuletyn Stowarzyszenia Absolwentów i Przyjaciół Wydziału Prawa Katolickiego Uniwersytetu Lubelskiego*, vol. XVIII, no. 20 (1) (2023): 207–220.

Accessibility of Cultural Institutions to Person with Special Needs

Paweł Śwital

Abstract Cultural institutions can be seen to be adapting to the requirements of regulations on accessibility. These regulations oblige public entities to meet minimum standards of architectural, information, and communication accessibility. Although they are not directed specifically at cultural institutions, they have contributed to changes in institutions' organisational and operational arrangements. The ambiguity of the regulations creates difficulties of interpretation and of meeting the legal standards imposed on institutions. This paper analyses legal regulations concerning the architectural, digital, information, and communication accessibility of cultural institutions. It also addresses the determination of the entities to which these regulations are directed, the guidelines to be followed by cultural institutions, and the objective scope of the regulations.

Keywords persons with disabilities – special needs – accessibility – barrier – culture – universal design

1 Introduction

The States Parties to the United Nations' Convention on the Rights of Persons with Disabilities¹ recognise the right of persons with disabilities to participate, on an equal footing with others, in cultural life, and shall take appropriate steps to ensure that persons with disabilities have access to cultural materials; to television programmes, films, theatre, and other types of cultural activities, in accessible formats; to places for cultural performances or services, such as theatres, museums, cinemas, libraries, and tourism services; and, as far as practicable, to historic monuments and sites of national cultural significance. This requirement corresponds with legal regulations on ensuring accessibility as implemented to the national legal order. It is therefore relevant to the Polish legal system.

1 The Convention on the Rights of Persons with Disabilities, drafted in New York on 13 December 2006 (OJ 2012, item 1169 as amended); 'the Convention on the Rights of Persons with Disabilities'.

Accessibility for people with special needs, including persons with disabilities, is a challenge for institutions engaged in cultural activities. This is due, *inter alia*, to the role these institutions play in cultural popularisation and education, but also to the nature of cultural activities, which should conform to the constitutional principle of equal access to cultural assets (Mituś 2019, 7). Under Articles 8 and 9(1) of the Organisation and Administration of Cultural Activities Act of 25 October 1991, ministers, heads of central offices, and local authorities organise cultural activities by establishing cultural institutions. Those created by ministers and heads of central offices are known as 'state cultural institutions', whereas those established by local authorities are referred to as 'local cultural institutions'.²

The government programme Accessibility Plus for 2018–2025 identifies the following barriers to ensuring accessibility: ambiguous and insufficient legal regulations on building, architecture, public space, and linear infrastructure; the absence of consistent accessibility standards across the country; a lack of effective audit mechanisms and a system of sanctions; low awareness of accessibility requirements; a poor accessibility to internet sites and applications, and to multimedia materials (films, audio recordings); a poor accessibility to cultural institutions and events; a lack of personnel qualifications; and restricted access to information about the accessibility of physical space, the digital environment, ICT systems, products, and services.³ These are probably the chief barriers to ensuring accessibility for people with special needs.

The accessibility requirement is based, *inter alia*, on the Act Ensuring Accessibility for Persons with Special Needs of 19 July 2019.⁴ These regulations guarantee architectural, digital, information, and communication accessibility, including with regard to the operation of websites and mobile applications.⁵ R. Mędrzycki points out that if a public entity is unable – particularly for technical or legal reasons – to ensure architectural, information or communication accessibility for a person with special needs, it must provide that person with alternative access (Mędrzycki 2021, 174).

It remains the pivotal question whether cultural institutions are open to adapting to, and implementing, the regulations required to meet the accessibility requirements laid down in law, and whether solutions can be offered to

2 The Organisation and Administration of Cultural Activities Act of 25 October 1991 (OJ 2024, item 87).

3 The government programme Accessibility Plus 2018–2025, Warsaw 2018, p. 17.

4 The Act Ensuring Accessibility to Persons with Special Needs of 19 July 2019 (OJ 2024, item 1411); 'the Accessibility Assurance Act'.

5 The operation of websites and mobile applications is governed by the Digital Accessibility of Public Bodies' Websites and Mobile Applications Act of 4 April 2019 (OJ 2023, item 1440).

ensure accessibility to persons with diverse needs and different types of disabilities. These questions relate to all kinds of activity and to the provision of accessibility by public entities. Overcoming barriers and ensuring accessibility, as defined by law, will be a challenge for cultural institutions.

Determining to which group the provisions of the current Accessibility Assurance Act are addressed is the first challenge. The legislator refers to persons with special needs in the very title of the Act. This concept has not previously been regulated in domestic law. Article 2(3) of the Act defines people with special needs as those who, due to external or internal characteristics or circumstances in which they find themselves, must take extra actions or use additional means in order to overcome barriers to participation in different spheres of life on an equal footing with others.⁶ The definition highlights the need to take extra actions or use additional means in order to overcome barriers. The subjects to whom the Act's provisions are addressed are not specified directly; rather, they are defined by reference to ensuring accessibility on an equal footing with others. Overcoming barriers can also be explained by reference to special needs. A barrier is defined here as an architectural, digital, information, or communication obstacle or restriction that prevents or hinders people with special needs from participating in various spheres of life on an equal footing with others.⁷

Accordingly, anyone may have special needs depending on their situation in a given environment. Persons with motor disabilities, deaf or blind persons, or persons with mental disabilities may be classified as people with special needs. This group may also include older people, children, pregnant women, or travellers with luggage. Barriers may also be temporary, for example for someone with a broken limb. The notion can therefore be interpreted quite broadly, which may contribute to problems with ensuring accessibility. The theory of universal design may be an answer to such a broad approach.

In line with the definition in Article 2 of the Convention on the Rights of Persons with Disabilities⁸, universal design means the design of products, environments, programmes, and services in such a way that they are usable by all people, to the greatest extent possible, without the need for adaptation or specialised design. This philosophy envisages reasonable design for all people living in communities. A single universal model for ensuring accessibility cannot be grounded in the applicable legal regulations. Customisation and adaptability play an enormous role in each case. When the concept of universal

⁶ Article 2(3) of the Accessibility Assurance Act.

⁷ Article 2(1) of the Accessibility Assurance Act.

⁸ OJ 2012, item 1169 as amended.

design is applied, however, design can be said to allow public spaces, including cultural institutions, to be used in a way that guarantees accessibility for people with special needs.

2 Architectural Accessibility of Cultural Institution Facilities

Efforts to ensure the accessibility of culture to persons with disabilities rely on universal design (design for everyone) as contemplated by the UN Convention on the Rights of Persons with Disabilities. This involves designing products, environments, programmes, and services so they are usable to all people to the greatest extent possible. Accessibility, achieved for example through universal design, is a feature of products and services that enables their full and equal use. This guarantees fair participation in public life, including culture, for all users.⁹

Architectural accessibility is the first of these standards. The Accessibility Assurance Act defines means of ensuring accessibility to people with special needs, and the duties of public entities and other entities discharging tasks financed with public resources. It also amends the Building Code so that technical requirements address the needs of persons covered by the Act (Lewoniewski 2019, 100). The minimum requirements provided for by the Act apply here, including: the provision in buildings of circulation spaces free of horizontal or vertical barriers; the installation of equipment or the use of technical means and architectural solutions that allow access to all rooms except technical rooms; the provision of information about the layout of rooms in a building at least visually and by touch or voice; the admission of persons entering a building with assistance dogs; and the provision for people with special needs of evacuation or another method of rescue.¹⁰ Pursuant to Article 4 of the Accessibility Assurance Act, public entities are required to remove barriers and prevent their emergence. A barrier is an architectural, digital, information, or communication obstacle or restriction that prevents or hinders people with special needs from participating in various spheres of life on an equal footing with others.

The designing rules introduced into the Building Code of 7 July 1994¹¹ require appropriate conditions to be ensured for persons with disabilities to use public

9 The Lublin Standards of Culture Accessibility. Available at: <https://lublin.eu/kultura/dostepnosc/lubelskie-standardy-dostepnosci-kultury/> [accessed 1 Sept. 2024].

10 Article 6(1) of the Accessibility Assurance Act.

11 OJ 2021, item 2351 as amended.

facilities and multi-dwelling buildings. This requirement should be understood as guaranteeing a minimum level of adaptation in buildings. Detailed requirements in this respect are set out in the Minister of Infrastructure's Regulation of 12 April 2002 on the technical conditions to be met by buildings and their location¹². The Regulation specifies the technical conditions to be fulfilled by buildings and their equipment, their placement on a building plot, and the development of plots for buildings. With regard to persons with disabilities, it contains provisions on the location of entrance doors and the form and dimensions of entrance spaces allowing for convenient movement (§ 61). In public buildings, generally accessible rooms on different floor levels should be adapted to the movement of persons with disabilities (§ 74). These measures ensure that persons with disabilities can move around buildings. It is also crucial that buildings not meeting these requirements are adapted to comply with the Regulation.

To provide persons with various types of disabilities with the possibility of active participation in cultural life and contact with cultural assets on an equal footing with others, the government Programme Accessibility Plus envisages the modernisation and expansion of cultural-institution infrastructure (including theatres, museums, culture and community centres, and libraries) on the basis of accessibility standards; and improved accessibility of cultural objects, including historic ones, by combining tailored architectural solutions (in consultation with historic monument conservators) with state-of-the-art technological solutions, information standards, and appropriate support procedures.

A guide to the culture sector on assuring accessibility was published in 2021¹³ as part of the project entitled SUCCESSIBILITY, intended to coordinate the government Accessibility Plus programme, co-funded by the European Union under Action 2.19 of the Operational Programme Knowledge Education Development 2014–2020. The authors note that it was prepared for people and institutions in the cultural sector, and for anyone wishing to implement accessibility in a reliable and reasonable manner, in conformity with the applicable law.¹⁴ The guide sets out principles of architectural accessibility achievable through universal design or reasonable improvements.¹⁵ Architectural accessibility also encompasses the accessibility of a building's immediate

12 OJ 2022, item 1225.

13 Guide to the culture sector on assuring accessibility. Available at: https://www.fundusze.eupejskie.gov.pl/media/106506/Poradnik_poprawiony.pdf [accessed 1 Sept. 2024].

14 Ibidem, p. 10.

15 Ibidem, p. 35.

surroundings. The guide and the Programme serve as support for cultural institutions in ensuring accessibility.

3 The Accessibility of Websites and Mobile Applications

The European Commission decided to harmonise digital accessibility across the EU in 2012. The result was Directive (EU) 2016/2102 of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies, adopted by the European Parliament after four years of work.¹⁶ It set minimum accessibility requirements for public sector bodies' websites and mobile applications, which are to become 'more perceivable, operable, understandable, and reliable'. These are the so-called four principles of accessibility. The Directive defines these concepts as follows: 1) operability, as the properties of a website or application that allow users to take advantage of all its functions; 2) compatibility, as the properties of a website or application that enable it to operate with as many programmes as possible, including tools and software aiding persons with disabilities; 3) perceivability, as the properties of a website or application that allow users to perceive it through hearing, sight, or touch; 4) understandability, as the properties of a website or application that allow users to understand its content and the manner of its presentation.

As noted by D. Skoczylas, digital accessibility also means ensuring conformity with the requirements of WCAG (Web Content Accessibility Guidelines) 2.1, level AA (Skoczylas 2023, 128). This undertaking is reflected in the Council of Ministers' Regulation of 12 April 2012 on the National Interoperability Framework¹⁷, the minimum requirements for public registers and the exchange of electronic information, and the minimum requirements for ICT systems. These standards contain guidelines for the design of websites, online services, and content published there, so that all users can access them on an equal footing. This entails website architecture that can also be used by persons with disabilities, including by means of mobile devices and applications (Marzec and Pietrasiewicz 2020, 69). Implementing these standards fulfils the duties to ensure the accessibility of websites and mobile applications.

Declarations of accessibility became legally compulsory in Poland for every public body website, as of 23 September 2020, and mobile application, as of

¹⁶ EU Off. J. L 327 of 2 Dec. 2016.

¹⁷ The Council of Ministers' Regulation of 21 May 2024 on the National Interoperability Framework, minimum requirements of public registers and electronic information sharing, and minimum requirements of ICT systems, OJ item 773.

23 June 2021. The declaration must describe the site's or application's accessibility status. Even if a website is inaccessible, it must still provide a fully accessible declaration stating that fact. Owners of websites or applications must, first of all, identify the status of their conformity with WCAG 2.1 AA. If a website is not fully compliant with the guidelines – which is reportedly often the case in Poland – non-conformities must be described and any exclusions identified, such as transitional periods provided for by the Accessibility Assurance Act (for example, for multimedia). If a website is non-conforming, its non-conformities must be listed and the reasons for them given, such as conflicts of regulations, a disproportionate financial burden, or exclusions envisaged by law. In any event, alternative means of access to the contents must be indicated.

M. Szeroczyńska notes that the WCAG 2.1 guidelines are descriptively structured around four principles, namely, perceivability, operability, understandability, and reliability (referred to as integrity and compatibility in the EU Directive and the Accessibility Assurance Act, respectively). Each principle is divided into guidelines, thirteen in total. Operability consists of five guidelines, understandability three, perceivability four, and reliability one. These thirteen guidelines define the fundamental objectives that website or application authors should pursue so that content is more accessible to users with various disabilities. The guidelines are not themselves measurable, but provide a general framework and objectives to be achieved. For each guideline, so-called success criteria are then formulated, which are measurable and verifiable (Szeroczyńska 2021, 228). The requirements are subject to sanctions (Nowak et al. 2024, p. 303). Fines can reach PLN 10,000 for a failure to ensure digital accessibility or for the absence of an accessibility declaration, and PLN 5,000 for a failure to make improvements over two successive years.

According to a report on digital, architectural, information, and communication accessibility in public cultural institutions (Konior et al. 2021, 30), based on a survey of all institutions in Lesser Poland, the 190 institutions surveyed operated a total of 392 websites. Most declared running one (45%) or two (36%) websites. The Krakow Festival Bureau stands out, running 35 websites. Of the 190 institutions, 3% have no websites of their own. A total of 57 (30%) have at least one website without a declaration of accessibility. Such declarations were not prepared for a total of 86 websites (22%). A clear majority of the websites that have the declarations (306) are partially nonconforming (79%). The implementation of mobile applications is another aspect. Public cultural institutions rarely have them: only 8 (out of 190) stated they have at least one application. In total, 12 applications were declared, with accessibility declarations drafted for only 4 of them. Most of those with declarations were

fully (3 applications) or partly (1 application) compliant with the Accessibility Assurance Act. This research shows that most websites and applications meet the legal requirements for ensuring accessibility, although there remain entities that fail to fulfil this duty.

Diagnosing the causes among addressees remains a major issue. J. Jarczyńska points out that the aetiology of digital exclusion is complex and involves a variety of factors: macrosocial (for example, the complete or partial unsuitability of websites or mobile applications to the needs of persons with disabilities); psychological (for example, low motivation to use new information and communication technologies and poor digital skills among persons with disabilities); and economic (for example, the excessive costs of purchasing new technologies and accessing the web) (Jarczyńska, 2023, 102). These barriers may hinder access to cultural institutions. It should be noted that an application or website which is fully adapted to the needs of persons with disabilities is impossible. Ensuring compliance with the WCAG standard and applying universal design principles to websites are therefore important in this respect as well.

4 Information and Communication Accessibility

Information and communication accessibility means providing people with special needs with at least the minimum requirements laid down in the Accessibility Assurance Act, designed and implemented in line with the concepts of universal design or reasonable adjustments, where necessary. With regard to information and communication accessibility, the Act imposes a duty to ensure it by: (a) providing support through the communication aids referred to in Article 3(5) of the Sign Language Act¹⁸, or by providing remote online access to interpreting services via websites and applications; (b) installing equipment or other technical means to support people who are hard of hearing, in particular, induction loops, FM systems, or equipment based on other technologies that assist hearing; (c) providing information about a body's activities on its website in an electronic file containing machine-readable contents, recording in Polish sign language, and information in easy-to-read language; and (d) ensuring communication with a public body as requested by people with special needs.

18 The Sign Language and Other Means of Communication Act of 19 August 201 (OJ 2023, item 20); 'the Sign Language Act'.

Pursuant to the Accessibility Assurance Act, communication options using various means of communication aids must be ensured. These are defined and listed in the Sign Language Act. These solutions or services primarily enable contact via electronic mail; text messages, including SMS, MMS, or messages sent via internet messengers; audio-video communication, also using internet messengers; fax; or websites that meet the digital accessibility standards.¹⁹

The solutions set out in the Opole Village Museum's Declaration of Accessibility may serve as an example of information and communication accessibility²⁰. The Declaration identifies various means of supporting communication, including electronic mail and text messaging. Ticket offices are equipped with local induction loops and pictograms. During events such as an exhibition opening or a lecture, mobile induction loops can be borrowed from the ticket offices. The museum's website provides a machine-readable text with the current cultural offer, a file describing the museum's activities in Polish Sign Language, and an introductory guidebook in an easy-to-read language. The museum has procedures for ensuring communication as requested by a person with special needs. The relevant information and a digitally accessible application form are posted on the institution's website. The implementation of these communication solutions meets the requirements laid down in the Accessibility Assurance Act. Anyone may request that inaccessible information be provided in an alternative form. This right includes the ability to specify a preferred format for the information.

5 Conclusion

Ensuring accessibility is at present a major challenge in guaranteeing people with special needs access to cultural institutions. The obligations imposed by the legislator provide equal opportunities to use the services offered by cultural institutions. Architectural, digital, information, and communication adaptation have been observable in the activities of cultural institutions since 2019. Programmes such as Accessibility Plus enable increasing numbers of cultural institutions to make such adaptations. Ensuring accessibility, however, requires universal design for a wide range of users, as well as reasonable measures to overcome barriers. The promotion of good practice in ensuring accessibility should therefore also be undertaken.

¹⁹ Article 3(5) of the Sign Language Act.

²⁰ The Opole Village Museum's Declaration of Accessibility. Available at: <https://www.muzeumwsiopolskiej.pl/deklaracja-dostepności> [accessed 2 Sept. 2024].

The findings reviewed here show that cultural institutions are adjusting their services and implementing accessibility standards. Designing web pages and mobile applications in a manner that meets WCAG standards and is compatible with assistive technologies should be a formal requirement. Information and communication accessibility, and the acquisition of new competences by cultural-institution staff in communicating with people with special needs, will remain further challenges. Each of the measures described also entails expenditure, both to ensure the accessibility of facilities, websites, and mobile applications, and to provide communication aids.

References

- Gorgolewski, Łukasz. "Dostępność budynków dla osób ze szczególnymi potrzebami – usuwanie barier architektonicznych w instalacjach elektrycznych", *Przegląd Budowlany* no. 9 (2019): 99–102.
- Jarczyńska, Jolanta. "Legislacyjne rozwiązania w zapewnieniu dostępności cyfrowej osobom ze szczególnymi potrzebami. Przegląd dokumentów prawnych", *Niepełnosprawność i Rehabilitacja* no. 92(4) (2023): 99–108.
- Konior, Agnieszka, Pluszyńska, Anna, and Grabowska, Anna. *Raport dostępność cyfrowa, architektoniczna i informacyjno-komunikacyjna w publicznych instytucjach kultury*. Kraków: Instytut Kultury Uniwersytetu Jagiellońskiego, 2021.
- Marzec, Ewa, and Pietrasiewicz, Adam. *Artykuł 5. Ustawa o zapewnieniu dostępności cyfrowej stron internetowych i aplikacji mobilnych podmiotów publicznych. Komentarz*, ed. by Grażyna Szpor and Kamil Czaplicki. Warszawa: Wydawnictwo Wolters Kluwer, 2020.
- Mituś, Ambroży. "Tworzenie i funkcjonowanie państwowych i samorządowych instytucji kultury", in *Vademecum dyrektora instytucji kultury*. Warszawa: Wydawnictwo C.H. Beck, 2019.
- Mędrzycki, Radosław. *Zasada solidarności społecznej w prawie samorządu terytorialnego*. Warszawa: Wydawnictwo Wolters Kluwer Polska, 2021.
- Nowak, Paweł Artur, Czekaj, Maciej and Salachna, Tomasz. "Dostępność cyfrowa instytucji pomocy społecznej", *Rozprawy Społeczne* no. 18(1) (2024): 299–314.
- Skoczylas, Dominika. "Dostępność cyfrowa determinantą zmian w funkcjonowaniu administracji publicznej?", *Studia Administracji i Bezpieczeństwa*, volume 13, fasc. 13 (2023): 121–132.
- Szeroczyńska, Małgorzata. "Dostępność cyfrowa stron internetowych podmiotów publicznych dla osób z niepełnosprawnościami", *Szkoła Specjalna* no. 3 (2021): 65–77.

The Specific Nature of Employment with Entities Engaged in Cultural Activities

Mariusz Wieczorek

Abstract Every state objective can be realised only if certain resources are committed to legally defined institutions and, above all, implemented through human work. The constitutional dimension of the state's cultural activities, as part of a service-oriented administration, requires in particular defining the status of those managing as well as employed by institutions engaged in cultural activities. Regulations governing the legal status of cultural employees that differ from those of the Labour Code are an example of differentiation within labour law. One purpose of this study is to answer the question as to the reasons for these differences.

The study will also discuss conflict-of-law rules that determine the extent to which so-called employee regulations – especially the Self-Government Employees Act – apply to staff engaged in cultural activities.

Keywords employee – employer – cultural institution – employee regulation – cultural activities

1 Introduction

In the light of Article 5 of the Polish Constitution, safeguarding the national heritage is one of the state's objectives. Actions undertaken to this end are, *inter alia*, expressions of gratitude for what the nation has inherited from its ancestors. The objective, however, should not be reduced merely to preserving the national heritage intact, but should also entail enriching it for the benefit of future generations. This idea is adumbrated in the following words of the preamble to the Polish Constitution: 'We, the Polish Nation – all citizens of the Republic [...] beholden to our ancestors [...] for our culture rooted in the Christian heritage of the Nation and in universal human values, [...] obliged to bequeath to future generations all that is valuable from our over a one thousand years' heritage'.

Every state objective can be realised only if certain resources are committed to legally defined institutions and are, above all, implemented through human work. The constitutional dimension of the state's cultural activities, as part of a service-oriented administration requires in particular defining the status of

those managing as well as employed by institutions engaged in cultural activities. Regulations governing the legal status of cultural employees that differ from those of the Labour Code are an example of differentiation within labour law. One purpose of this study is to answer the question as to the reasons for these differences.

The conflict of law rules will also be discussed that determine the extent to which the so-called employee regulations, especially the Self-Government Employees Act, apply to staff engaged in cultural activities.

2 The Cultural Activities Act as a Source of Special Labour Law

In light of the Labour Code provisions¹, one can conclude that differentiation – that is, the parallel regulation of the same matter by legal norms of differing contents – is a characteristic feature of Polish labour law (Liszczyński 2023, 30; Baran 2019, 123). Such differentiation may be based on objective criteria, in particular the strenuousness or harmfulness of work (or working conditions). The type of work – an objectively material element of employment contract (or an equivalent act) – may also constitute an objective criterion for differentiation. For example, university professors are subject to the task-based working-time system pursuant to the Act of 20 July 2018 on Higher Education and Science². As part of differentiation, employers may not only be restricted in their freedom to determine working-time systems provided for in the principal source of Polish labour law, namely, the Labour Code, but may also be subject to duties not envisaged by the Code. Article 76(1)(6) of the Civil Service Act of 21 November 2008³, which provides that members of the civil service corps shall develop their professional knowledge, is an example of the latter.

Differentiation must be viewed through the prism of the catalogue of sources of labour law⁴. It forms part of the constitutionally defined structure of the formal sources of law, with vertical and horizontal relationships among them (Oniszczyk 2010, 259–260). The latter result from constructing the system of sources of law on the basis of the principle expressed in Article 2 of the

1 The Labour Code of 26 June 1974 (OJ 2023, item 1465 as amended), Articles 9 and 5.

2 OJ 2023 as amended, Article 127(1).

3 OJ 2024 item 409.

4 Article 9 § 1 of the Labour Code

Polish Constitution⁵, namely the rule of law. Grounding the system of positive law sources in a hierarchical structure, with the Constitution and Acts enacted by the parliament at its apex, is a major element of the concept of the rule of law (Garlicki 2022, 140).

The legal definition of labour law, expressed in the Labour Code⁶, is framed by listing the sources of this branch of law. Comparing the constitutional catalogue of universally binding law⁷ with the list of sources of labour law leads to the obvious conclusion that acts not enumerated in the Constitution may also constitute sources of labour law. In the doctrine, these are referred to as specific sources of labour law (Włodarczyk 2010, 10) and include collective labour agreements and other collective arrangements, as well as by-laws and statutes.

It is noteworthy that the legislator has established the principle of a hierarchy within the catalogue of specific sources of labour law⁸. Their vertical relationships are determined not only by their formal character, as in the case of the sources of universally binding law, but also by the favourability principle. The provisions of by-laws and statutes cannot be less favourable to employees than those of collective labour agreements and other collective arrangements⁹. This principle also governs the relationship between the specific sources of labour law and universally binding law regulating the rights and obligations of employees and employers. The provisions of collective labour agreements and other collective arrangements cannot be less favourable to employees than those of the Labour Code, other Acts, and executive regulations¹⁰.

This suggests the conclusion the objective extents of the generally prevailing and specific labour law may overlap, though their contents are not necessarily identical. Any possible differences in content may be a result of the favourability principle.

On the other hand, it should not be forgotten that employees' minimum rights and maximum responsibilities are determined by normative acts that constitute sources of the universally binding law as set out in the Polish Constitution¹¹.

Polish labour law, though codified, is highly diversified. This results not only from the possibility of modifying general labour law (a notion that applies,

5 The Constitution of the Republic of Poland of 2 April 1997, OJ 1997, No. 78, item 483 as amended.

6 Article 9 § 1 of the Labour Code

7 Article 87 of the Constitution.

8 Article 9 § 2 and § 3 of the Labour Code

9 Article 9 § 3 of the Labour Code

10 Article 9 § 2 of the Labour Code

11 Article 87 of the Polish Constitution.

though to varying degrees, to all employees, with the Labour Code a particular example – Florek 2016, 13) by means of collective labour agreements, by-laws, and statutes, but also from so-called special labour law. Its sources include employee regulations – namely, acts that specifically govern the employment relationships of a given category of employees¹² – and instruments issued on the basis of statutory delegations contained in those acts. A group of employees may be distinguished for the purpose of determining their employment relationships more specifically, according to criteria such as the department, branch, or sector of employment, or the type of work.

The subject of this study implies that the status of employees of cultural institutions displays certain features that are absent from the basic model of employment, that is, employment under a contract for an indefinite term, while assuming that the abstract and general rights and obligations of employees of such institutions are governed by the Labour Code.

This research problem calls for one further reservation. Employment in the cultural sector, where it takes the form of an employment relationship, should be analysed with regard to the elements of that legal relationship. This means that attention should be paid to its parties, its object, and the content of the employment relationship of a cultural institution employee.

2 Employers and Cultural Activities

By force of the Organisation and Conduct of Cultural Activities Act (OCCAA) of 25 October 1991¹³, cultural activity may be carried out by legal persons, natural persons, and organisational units without legal personality. This means that each of them has the capacity to be an employer under the generally applicable labour law¹⁴. Specialist literature (Antoniak-Tęskna 2019) rightly notes that cultural activity is not reserved exclusively to the state and its cultural institutions within the public finance sector, and that it was the legislator's desire that such activity should, in principle, be capable of being carried out by anyone, including natural persons and private-law entities.

The research perspective adopted here emphasises the diversity of entities engaged in cultural activity. Notably, not all of them have the status of cultural institutions as defined by the provisions of the OCCAA. That status attaches

¹² Article 5 of the Labour Code.

¹³ OJ 2024 item 87, 'the OCCAA', Article 3(1).

¹⁴ Article 3 of the Labour Code.

only to entities established as state cultural institutions¹⁵ and self-government cultural institutions¹⁶, provided that conducting cultural activity is their core statutory objective. *A contrario*, a state or self-government organisation (a legal person or an organisation entity without legal personality) for which cultural activity is not a core statutory objective will not qualify as a cultural institution. Nor will a private organisation engaged in cultural activity, regardless of the scope and nature of its operations.

The classification of an entity conducting cultural activities has far-reaching consequences for the legal position of its employees, since not all such employees will be in an employment relationship whose content, in abstract and general terms, is determined by the same normative acts – both within the sphere of universally binding law and, of course, within that of specific labour law¹⁷. This discussion will therefore help to answer the question of which sources of labour law apply to particular employers engaged in cultural activity. Employer status under the Labour Code does not mean that the Code's provisions fully govern employees' rights and duties.

Employment relationships of those working for state cultural institutions are, in general, governed by the Labour Code. However, under the Organisation and Conduct of Cultural Activities Act¹⁸, the Labour Code applies only in matters not regulated by that Act.

The position of employees of self-government cultural institutions is somewhat more complicated. Horizontally, the relevant statutory sources of law include not only the Labour Code and the OCCAA, but also the Self-Government Employees Act (SGEA) of 21 November 2008¹⁹. The latter applies to organisations established and run by local authorities²⁰, including self-government cultural institutions. It must be remembered, however, that the SGEA does not apply to employees of entities falling within the Act's personal scope if their legal status is regulated by separate provisions²¹.

A two-stage application of the interpretative rule used to resolve conflicts of law – the *paremia lex specialis derogat legi generali* – suggests that employees of self-government cultural institution are subject to the SGEA. This means

15 Article 8 of the OCCAA.

16 Article 9 of the OCCAA.

17 Space constraints prevent the question of specific sources of law binding entities engaged in cultural activity from being explored in depth here. The discussion will therefore focus on the statutory sources of labour law.

18 Article 26(1) of the OCCAA.

19 OJ 2024, item 1135, 'the SGEA'.

20 Cf. Article 2(1)–(3) of the SGEA.

21 Article 3 of the SGEA.

that, with regard to such cultural institutions, the SGEA constitutes special (and partly separate) regulation in relation to the Labour Code. At the same time, the provisions of the OCCAA governing the employment relationships of cultural institution employees are special in relation to both the SGEA and the Labour Code.

In the light of the OCCAA²², legal persons and organisational units without legal personalities whose core objectives do not include cultural activities may nevertheless carry out such activity, in particular in the form of clubs, care centres, community centres, and libraries. Chapter 2a of the OCCAA, however, does not apply to employees of state organisations that conduct cultural activity only as an ancillary activity, since their employers do not have the status of cultural institutions. It should also be noted that the staff of self-government organisations will be subject to the SGEA, and to the Labour Code insofar as the Act does not apply. In contrast, employees of state organisations in positions connected with cultural activity carried out by their employers as an ancillary activity will be governed by the Labour Code

Finally, in the case of private-law entities – both organisations with and without legal personalities, regardless of the scale and type of their cultural activity, as well as natural persons – the legal status of employees whose duties involve the creation, dissemination, and protection of culture is governed by the Labour Code. In particular, the provisions of the OCCAA do not apply.

Some statutory tasks of cultural institutions in the field of cultural activity²³, where such institutions are organised by the minister competent for culture and the protection of national heritage, may be carried out with the aid of subsidiaries. These are entities based outside the Republic of Poland, intended to conduct cultural activities there within the meaning of the OCCAA²⁴. The legal status of their employees will depend on several factors. In particular, it is crucial whether the country where such a subsidiary operates is an EU Member State. If an employee is posted to an EU state, EU legal norms, in particular Directive 96/71/EC, shall apply. If an employee is delegated to a non-EU country, the employer is bound by Article 29¹ of the Labour Code. In addition, a subsidiary's employees may be hired under the laws of the state in which they work.

22 Article 4(1) of the OCCAA.

23 Article 21(2a) of the OCCAA.

24 Article 1 of the OCCAA.

4 Employment Relationships of Employees with Entities Conducting Cultural Activity

The proposition that the employment status of those working for entities engaged in cultural activity is heterogeneous provides the starting point for the discussion that follows. Several reasons can be distinguished. First, this is due to the fact that several Acts apply to this subject matter in a horizontal relationship. The system of objective and subjective determinants governing entities conducting cultural activity, and the interaction of the Labour Code, the SGEA, and the OCCAA, mean that not every employee will be subject to the same labour legislation. Apart from differentiation criteria intrinsic to general labour law, the OCCAA introduces an additional differentiation criterion, namely, the type of work.

It should be noted at the outset, however, that Chapter 2a of the OCCAA, as the Act's title indicates, governs in particular the employment relationships of employees of cultural institution. *A contrario*, an employee with an entity engaged in cultural activity that is not a cultural institution will not be subject to the OCCAA

In objective terms, the OCCAA regulates the working time of cultural institution employees differently. Given the particularly important protective function of labour law, it must be acknowledged that the legislator has decided to weaken that protection in relation to cultural institution employees. The working time settlement period in a cultural institution may be extended to twelve months for reasons of work organisation, provided that the general principles of occupational health and safety are observed²⁵. It should be stressed that the possibility of extending the settlement period to twelve months is not unknown to general labour law. It is provided for in Article 129(2) of the Labour Code, which means that the corresponding OCCAA provision is superfluous.

The settlement period is extended by means of a collective labour agreement, if one is in force in the cultural institution concerned, or by arrangement between the employer and employees, as applicable at the workplace, upon notification of the competent labour inspector²⁶. In this way, the legislator modifies the procedure for introducing an extended settlement period as provided for in the Labour Code²⁷.

The OCCAA provisions under which an interrupted working-time system – scheduled in advance and providing for no more than one break of up to five

25 Article 26b(1) of the OCCAA.

26 Article 26b(2) of the OCCAA.

27 Cf. Article 150 § 3 the Labour Code

hours in a day – may be applied to cultural institution employees should also be regarded as superfluous²⁸.

Prima facie, the permissibility of applying equivalent working time, as defined in the Labour Code²⁹ and allowed for by the OCCAA,³⁰ to cultural institution employees could also be regarded as superfluous. Specialist literature correctly notes (Gajewski 2016, Legalis), however, that this OCCAA provision constitutes an exception to the Labour Code principle³¹ that interrupted working time shall not be applied to employees subject to an equivalent working-time system. Equivalent working time is a system in which daily working time may be extended to twelve hours, offset by shorter daily working time on other days or by days off. In effect, interrupted and equivalent working-time systems may be combined, subject, of course, to the remaining conditions governing their use.

The OCCAA provision introducing the possibility of ‘accumulating’ days off for cultural institution employees constitutes a significant modification of the content of their employment relationships³². Under their work schedule in a five-day week, they may be granted days off, including in lieu of rest days. As a result, such days off may be combined with outstanding leave from a previous settlement period, since employees must be granted any untaken leave by dates arranged in the leave schedule no later than 30 September of the following calendar year. There are therefore no legal obstacles to granting a day off together with overdue leave.

The OCCAA, in addition to its working-time rules, contains provisions that significantly affect the entitlements of cultural institution employees, irrespective of the type of work they perform. The legislator has chosen to determine the structure of remuneration components for this professional group³³.

The differences in the regulation of the content of cultural institution employees’ employment relationships described above apply irrespective of the type of work performed. The employment status of this group is not homogeneous, however, as it includes creators, developers, and performers of theatrical, musical, dance, film, or other audio-visual works, who are artistic employees³⁴.

28 Article 26c(1) of the OCCAA; cf. Article 139 § 1 of the Labour Code.

29 Article 135 § 1 the Labour Code

30 Article 26c(1) of the OCCAA; cf. Article 135 §1 of the Labour Code.

31 Article 139 § 2 of the Labour Code

32 Article 26d of the OCCAA.

33 Cf. Article 31 of the OCCAA

34 Article 26a(2) of the OCCAA

An artistic employee may receive additional remuneration, in particular for their role in a show or concert, for directing, stage design, choreography, or musical direction, or their contribution to the creation of an audio-visual production. Other cultural institution employees are not entitled to such remuneration. In addition, artistic employees, who, with their employers' consent, use their own instruments or accessories, stage costumes, props, or tools at work may receive compensation for their use.

Particular emphasis should be placed on the fact that the legislator includes in the OCCAA some regulations that interfere with employees' freedom to work³⁵. Taking up additional employment or activities for another entity by an artistic employee requires the employer's consent insofar as such additional employment or activities could conflict with the performance of the employee's duties under their employment relationship. The employer may grant consent, provided that the other entity agrees to compensate any costs the employer may incur in connection with the employee's additional employment or activities, in particular those arising from the cancellation of a performance or concert, the need to engage another performer, or the need for additional rehearsals. Performing additional employment or activities without the employer's consent constitutes a qualified ground for termination of the employment relationship at no notice due to the employee's fault. It may amount to a gross breach of a fundamental duty by an artistic employee.³⁶

5 Conclusion

An analysis of the relevant legal acts has shown that the specific nature of the employment relationships of employees of entities engaged in cultural activity is determined by several factors.

The legal status of entities conducting cultural activities appears to be the root cause. Their inclusion in the public financial sector, and whether such activity constitutes their core statutory objective, determine whether they are bound to apply the OCCAA to their employees. In addition, if such an entity is a self-government organisation, the status of cultural institution employees will also be determined by the Self-Government Employees Act. At the same time, the Labour Code remains the key source of labour regulation.

35 Article 31 of the OCCAA

36 Cf. Article 52 § 1(1) of the Labour Code

Employees of subsidiaries are in a special legal position. The content of their employment relationships depends on where the subsidiary is based and on whether an employee has been posted there.

The status of those engaged in artistic activities by entities other than cultural institutions is determined by the universally applicable labour law. The Labour Code is, of course, of paramount importance.

The employment relationships of employees of cultural institutions are subject to special regulation only to a limited objective extent. It should be added that a number of the special working-time provisions in the OCCAA add nothing beyond the Labour Code. Indeed, most are superfluous.

De lege lata, the OCCAA provisions limiting the possibility of additional work by artistic employees seem of paramount importance, as they interfere with constitutionally guaranteed freedoms³⁷ reflected in the Labour Code³⁸.

References

- Antoniak-Tęskna, Patrycja. *Organizowanie i prowadzenie działalności kulturalnej. Komentarz* 2019. eLEX.
- Florek, Ludwik. "Powszechne a szczególne prawo pracy", in *Powszechne a szczególne prawo pracy*, ed. by Ludwik Florek. Warszawa: Wolters Kluwer, 2016.
- Gajewski, Sebastian. *Ustawa o organizowaniu i prowadzeniu działalności kulturalnej. Komentarz*. Legalis, 2016.
- Garlicki, Leszek. *Polskie prawo konstytucyjne. Zarys wykładu*. Warszawa: Wolters Kluwer, 2022.
- Liszczy, Teresa. *Prawo pracy*. Warszawa: Wolters Kluwer, 2023.
- Oniszczyk, Jerzy. "Źródła prawa pracy" in *Zarys systemu prawa pracy. Tom I. Część ogólna prawa pracy*, ed. by Krzysztof W. Baran. Warszawa: Wolters Kluwer, 2010.
- Włodarczyk, Mirosław. "Swoiste źródła prawa pracy" in *Zarys systemu prawa pracy. Tom I. Część ogólna prawa pracy*, ed. by Krzysztof W. Baran. Warszawa: Wolters Kluwer, 2010.

37 Article 31a(2–6) of the OCCAA

38 Article 26 § 2(2) of the Labour Code

Funding of Cultural Institutions in Poland

Piotr Kobylski

Abstract This is another contribution to the discussion on the financing of cultural institutions in Poland, based on an analysis of the legal regulations applicable to the operation and funding of cultural institutions and the practice of their application in recent years. This is all the more important because the legislator approaches this issue with particular emphasis, noting in Article 5 of the Polish Constitution that the Republic of Poland safeguards its national heritage. The legal position of cultural institutions with regard to the stability of their funding will therefore be discussed here. An evaluation will be undertaken of whether, *de lege lata*, sufficient public resources are provided for cultural activities. The monitoring of public expenditure on culture, and the question of a mechanism to compensate such institutions for losses incurred, will also be addressed.

Keywords cultural institutions – public resources – sources of financing – financial management – subsidy

1 Introduction

This is a study of the funding of cultural institutions in Poland. As part of the public finance sector, their financial management is based on the Accounting Act¹. Pursuant to the Organisation and Administration of Cultural Activities Act², they are legal persons operating on the basis of their founding acts, statutes adopted by their founders, and organisational by-laws. They take the form of theatres, philharmonics, cinemas, museums, or art galleries. Importantly, the number of cultural institutions continues to grow, as does their employment. Despite the decentralisation undertaken since 1989, the role and significance of the public sector in the administration and funding of cultural activities have not diminished. As a result, culture is still primarily supported by public resources and administered by public authorities.

Specialist literature notes that ‘the extent of the public culture sector (arts and culture propagation institutions) and the methodology of budget financing

1 The Accounting Act of 29 September 1994 (OJ 2024, item 120).

2 The Organisation and Administration of Cultural Activities Act of 25 October 1991 (OJ 2024, item 87).

(covering steadily growing costs) fail to provide for involving a broad range of partners in cultural activities, including new ones, oriented towards the challenges of contemporary culture' (Głowacki et al. 2010, 22). The amended Organisation and Administration of Cultural Activities Act of 31 August 2011³ was expected to change this. Institutions' activity plans, formerly approved by their directors, were replaced with financial plans compiled by directors. In this way, the principles of cultural institution financial management were aligned with the Public Finances Act⁴. A financial plan distinguishes operating revenue, subsidies from central or local budgets, costs such as payroll and wage-related insurance contributions, interest on liabilities, purchases of goods and services, asset-related expenditure, funding awarded to other entities, and accounts payable and receivable at the beginning and end of the year⁵. The statutory catalogue of cultural institutions' revenue has been narrowed.

This is another contribution to the discussion on the financing of cultural institutions in Poland, based on an analysis of the regulations governing the operation and funding of cultural institutions and the practice of their application in recent years (Kołaczkowski and Ratajczak 2021, 9–27; Modzelewska and Kukołowicz 2015, 2–19; Mielko 2017, 99–126). This is all the more important because the legislator has placed particular emphasis on this issue, noting in Article 5 of the Polish Constitution⁶ that the Republic of Poland safeguards its national heritage. The legal position of cultural institutions and the stability of their sources of funding will therefore be addressed. The study will centre on an assessment of the model that, *de lege lata*, is expected to ensure sufficient public resources for cultural activity. The monitoring of public spending on culture and the question of a mechanism to compensate such institutions for losses incurred will also be considered. To this end, the dogmatic method will be employed, as the principal research method in the legal sciences.

2 Sources of Financing for Cultural Activities

A source of financing is essential to the organisation of cultural activity. In general, public and private support may be distinguished. In Poland, the former is, of course, the primary source, deriving from the state and local budgets. Within this framework, the legislator has envisaged two types of funding:

3 OJ No. 207, item 1230.

4 The Public Finances Act of 27 August 2009 (OJ 2023, item 1270).

5 Article 31 of the Public Finances Act.

6 The Constitution of the Republic of Poland of 2 April 1997, OJ No. 78, item 483 as amended.

direct and indirect (Szlendak et al. 2012, 35). The former presupposes a redistribution of income to cultural institutions. In this regard, two methods may be distinguished: a subjective method, under which a specific institution conducting cultural activities is funded, and an objective method, under which public resources are spent on purchasing public goods and services from their immediate manufacturers or providers. Indirect funding, in contrast, employs partnership mechanisms such as licencing, subsidising, and tax discounts or reliefs, among other means.

In addition, cultural activity is financed from the state budget through the Minister for Culture and National Heritage⁷, from local authorities⁸, and from foreign funds. The Minister for Culture and National Heritage, with a share of the state budget at their disposal, may distribute it in accordance with the annual budget law in force and the Public Finances Act. Local authorities operate on similar principles. Private support, in turn, includes resources from non-profit organisations, households, and enterprises, above all in the form of donations, sponsorship, promotion, or publicity. The role of funding from the national lottery for cultural development and the protection of national heritage should not be ignored either (Ilczuk et al. 2020, 7).

The relationship between cultural institutions and public duties is equally important. Under the Corporate Income Act⁹, cultural institutions are exempt from income taxation only in respect of their statutory activities, to the exclusion of any business operations. The same applies to non-governmental organisations engaged in cultural activity that have the status of public benefit institutions. Legacies and donations¹⁰ to cultural institutions are tax-free as well. Under Article 22 of the Personal Income Tax Act¹¹, artists and creators may deduct up to 50 per cent of their revenue in connection with the exercise of copyright and related rights. Cultural institutions may also be exempt from value added tax, provided that they do not systematically generate profits from their cultural activities, or that they allocate all such profits to their continued activities. Fees under Article 20 of the Copyright and Related Rights Act¹²

7 The Minister for Culture and National Heritage financially supports the state's cultural policy as conducted by culture institutions, entities from outside the public finances sector, and non-governmental organisations.

8 Local authorities receive dedicated subsidies from their budgets for tasks connected with regional development policy and culture development, and for the financing or co-financing of investments.

9 The Corporate Income Tax Act of 15 February 1992 (OJ 2023, item 2805).

10 The Legacies and Donations Tax Act of 28 July 1983 (OJ 2024, item 596).

11 The Personal Income Tax Act of 26 July 1991 (OJ 2024, item 232).

12 The Value Added Tax Act of 11 March 2004 (OJ 2024, item 361).

provide additional support for cultural institutions: manufacturers and importers of tape recorders, video players, and similar equipment, photocopiers, scanners, and other reprographic equipment, as well as blank media for such equipment, must pay up to 3 per cent of the sums due on their sales to collective management organisations.

A major role in the current model of funding is played by subsidies – recorded under special rules in central or local budgets – and state-dedicated funds, which serve to finance or co-finance public tasks under the Public Finances Act, other statutes, or international treaties. A operating subsidy allows an institution to manage the funds for its own objectives and tasks, whereas a dedicated subsidy is granted for a specific expenditure and requires the purpose of the public resources to be identified. It should be borne in mind that subsidies are transferred as part of annual budgets and must be accounted for at the end of the budgetary year in order to determine the return of any unused funds. The literature identifies a range of possible dysfunctions in the case of operating subsidies (Maj-Waśniowska and Sołtyk 2018, 62–63), such as late subsidy settlements¹³; failure to include subsidies in appendices to budget resolutions¹⁴; incorrect classification of an operating subsidy for local cultural institutions outside the public finance sector¹⁵; defective definitions of subsidy types for local cultural institutions in lists of scheduled subsidies¹⁶; late approvals of subsidy settlements¹⁷; lack of the chief accountant's (treasurer's) signature on subsidy settlements¹⁸; or failure to approve subsidy settlements by the head of the local government unit responsible for overall financial management¹⁹.

In 2023, spending by cultural institutions rose by as much as 54.2% compared with 2022 and totalled PLN 51.9 million. The largest share was spent by institutions in the Mazovian region (48.0%). Their financial results were better than in 2022: total revenue²⁰ grew by 16.2% and costs by 15.7% in 2023²¹.

13 Articles 126 and 251 of the Public Finances Act.

14 Article 214(1) of the Public Finances Act.

15 Article 215(1) of the Public Finances Act.

16 Article 215(2) of the Public Finances Act.

17 Article 68(2)(1) and (3) of the Public Finances Act.

18 Article 54(3)(1) of the Public Finances Act.

19 Article 53(1) of the Public Finances Act.

20 The culture institutions in the Mazovian region generated the maximum (PLN 5,754,600) and those in the Lublin region, the minimum (PLN 1,476,300) revenue for a single institution in 2023.

21 Available at: <https://stat.gov.pl/obszary-tematyczne/kultura-turystyka-sport/kultura/wyniki-finansowe-instytucji-kultury-w-2023-roku-dane-wstepne,8,28.html> [accessed 11 June 2024].

It should be noted that cultural expenditure is divided into current and asset-related spending. The former includes, above all, payroll, cultural events, and the maintenance of buildings and other resources. Authors stress that the condition of culture can be assessed on the basis of this indicator (Szara 2017, 16). Asset-related spending, in contrast, reflects the scale of investments in culture, including the cost of equipping auditoria with systems enabling persons with disabilities to participate, or to construct new cultural facilities.

3 Entities Engaged in Cultural Activities

Entities engaged in cultural activities in Poland may take a wide range of legal forms. For the purposes of this study, public institutions, non-profit organisations, and private entities should be distinguished. The first are concerned primarily with cultural heritage and the broadly defined dissemination of culture. Non-profit organisations undertake some public tasks, while private entities focus on commercial operations such as cinemas or advertising (Musiał-Gąsiorowska 2019, 27–37). In 2022, 3,958 cultural and community centres, clubs, and care centres were active. They held 227,300 events, attracting 27.3 million participants. Overall, the number of events they organised rose by 45.2% compared with 2021.²²

Cultural institutions are state and local entities whose core statutory objectives are cultural activity. As of 10 June 2024, 80 cultural institutions organised by the Minister for Culture and National Heritage were registered²³. Arts institutions are a special form, established to carry out artistic activity in the fields of theatre, music, and dance involving creators and performers. Cultural activities may also be carried out by private individuals, legal persons, and organisational units without legal personality (Ćwikła 2010, 261–265). Importantly, the Organisation and Administration of Cultural Activities Act does not clarify the concept of a non-public ‘cultural organisation’ engaged in cultural activity. It should also be noted that the Organisation and Administration of Cultural Activities Act does not apply to non-profit organisations or private entities. Authors observe that such entities often lack separate legal personality and operate within the structures of the organisations that have established them

22 Available at: <https://stat.gov.pl/obszary-tematyczne/kultura-turystyka-sport/kultura/dzialalnosc-centrow-kultury-domow-kultury-osrodkow-kultury-klubow-i-swietlic-w-2022-roku,9,6.html> [accessed 11 June 2024].

23 Available at: <https://bip.mkidn.gov.pl/pages/rejestry-ewidencje-archiwa-wykazy/rejestry-fundacji-i-instytucji-kultury.php> [accessed 11 June 2024].

(Szulborska-Lukaszewicz 2012, 309–310). If these are foundations, they are governed by the Foundations Act²⁴; if they are associations, by the Associations Act²⁵. The Public Benefit and Voluntary Activities Act²⁶ is also relevant, as it sets out the principles of cooperation between non-profit organisations and public authorities. The Public–Private Partnership Act governs cooperation between private entities and the public sector²⁷.

Authorities that establish cultural institutions (organisers) – ministers, heads of central offices, and local authorities – must ensure the resources needed to initiate and conduct cultural activity. The legislator has additionally assumed that conducting cultural activities is a duty of local authorities. It should be noted that Article 21 of the Organisation and Administration of Cultural Activities Act provides for the possibility that a cultural institution may be organised by more than one entity. The rights of each organiser are set out in a dedicated agreement between them. Natural persons, legal persons, and organisational units without a legal personality may be parties to such agreements.

The financial management of cultural institutions is based on financial plans prepared by their directors and aligned with the subsidies provided by their organisers. The plans are drawn up in accordance with the Public Finances Act and should include a plan of services and operating revenue, subsidies, a cost plan (including payroll and benefits, the cost of purchasing goods and services, and other repayments of liabilities), asset-related spending (including possible repairs, maintenance, or investments), and accounts payable and receivable at the year's start and end. In general, state cultural institutions are financed from the central budget through operating and dedicated subsidies. Local cultural institutions, in turn, are funded primarily from the local budgets of their organisers, likewise through operating and dedicated subsidies. It should be noted that local authorities are supported with state-budget resources in connection with their duties.

While organiser's subsidies constitute the bulk of each cultural institution's revenue, this should not provide organisers with a basis for interfering with operations. The fact that subsidies are determined for a single budgeting year constrains cultural institutions, which often need substantial lead time to prepare for larger projects. Moreover, in the case of operating subsidies, cultural

24 The Foundations Act of 6 April 1984 (OJ 2023, item 166).

25 The Associations Act of 7 April 1989 (OJ 2020, item 2261).

26 The Public Benefit and Voluntary Activities Act of 24 April 2003 (OJ 2023, item 571).

27 The Public–Private Partnership Act of 19 December 2008 (OJ 2023, item 1637).

institutions do not receive instalments or advances. The view is well established in the literature that the distribution of operating subsidies 'restricts access to resources' (Wieczorek 2011, 67).

4 Irregularities in the Financing of Cultural Institutions

This analysis of the funding model for cultural institutions in Poland requires the identification of certain defects in the financial management of measures undertaken by both organisers and the cultural institutions themselves. To begin with, cultural institutions must establish two funds: a cultural institution fund and a reserve fund. The cultural institution fund comprises the assets determined by the organiser when establishing the institution and the value of non-depreciable immovable assets financed through subsidies or received free of charge, less any net loss not covered by the reserve fund if losses exceed that fund. The reserve fund, in turn, consists of the net profit from the previous year allocated to covering the institution's losses. This mechanism is typical of public-sector budgets, where the allocation of goods and services shapes the state's actions (Throsby 2014, 19). Cultural institutions must therefore strive for financial stability (Grząba 2020, 131–148).

Operating subsidies provided by organisers are particularly valuable to cultural institutions (Kołaczkowski and Ratajczak 2022, 84). Given that organisers are obliged to ensure the resources necessary to initiate and continue cultural activity, and to maintain the facilities in which institutions carry out that activity, such subsidies must be regarded as a statutory duty. They must therefore be properly calculated. The level of subsidies for cultural institutions should depend on the scope and subject of an institution's activity and on the nature and cost of the services it provides.

Subsidising cultural institutions must not, however, undermine their autonomy, particularly since cultural institutions, as legal persons, should by definition be responsible for their own financial management. They manage the property with which they have been endowed or which they have acquired, and thus conduct their own administration within the means available to them. *De lege lata*, it is unacceptable for organisers to direct the process or methods of spending funds held by cultural institutions. This violates their autonomy and effectively reduces an operating subsidy to something akin to a dedicated subsidy. Authors note that organisers sometimes take advantage of this situation and claim entitlement to some of the income earned by cultural institutions (Liżewski 2021, LEX). Organisers' appropriation of funds obtained

by cultural institutions that should be used for statutory duties is another example of a serious breach of sound financial management. Nor can increasing subsidies to cover cultural institutions' losses be accepted: since organisers are not responsible for cultural institutions' liabilities, they cannot be expected to compensate their losses either.

Close scrutiny of cultural institutions goes hand in hand with a focus on directors' proper spending of public resources. A cultural institution director manages the institution and represents it in external relations. Accordingly, directors administer public resources and their actions must comply with the Liability for the Violations of Public Finances Discipline Act²⁸. This liability applies to managers of public finance sector entities, including cultural institution directors, as well as the staff of such organisations or other persons entrusted – by law or under separate legislation – with duties in them; failure to perform such duties, or their improper performance, constitutes a breach of public finance discipline. As a result, spending a subsidy for purposes other than specified by the awarding entity is a breach of public finance discipline. Using a subsidy after an appointed deadline is another such breach. In contrast, spending funds earlier than the arranged schedule does not constitute a breach²⁹.

M. Grząba is right to emphasise that the role of the state is 'not only to finance cultural assets and services from public funds, but also to shape consumer preferences to provide the public with access to cultural offers free of charge or paid in part only' (Grząba 2020, 146). This is all the more important because cultural institutions are not profit-oriented and meet their day-to-day costs and liabilities from their revenue (Hołda et al. 2005, 118–134). If cultural activity is to be treated as meeting the collective needs of the community, it should therefore be borne in mind that operating subsidies – the basis of cultural institution funding – must also cover personnel costs. Cultural institutions should be able to pay their staff adequately. The problem of insufficient funding is particularly acute in arts institutions, where the payroll costs for staff involved in an event are often considerably higher than revenue from ticket sales (Orankiewicz 2013, 80).

28 The Liability for the Violations of Public Finances Discipline Act of 17 December (OJ 2024, item 104).

29 The Main Adjudication Committee's decision of 3 November 2005, DF/GKO/Odw.-76/100/RN-26/2005/611, LEX No. 159460.

5 Conclusion

The legal regulations governing the organisation and conduct of cultural activity should, above all, take account of the specific nature of different cultural institutions. Arts institutions, as discussed here, certainly require genuine autonomy, expressed in real financial independence, which would also help to define the responsibility of organisers. *De lege lata*, under the current funding model, losses not covered by reserve funds are made good from the institution's fund, including its operating revenue. *De lege ferenda*, cultural institutions' revenue should be allocated primarily to their statutory development. A mechanism is therefore needed that would provide for an institution's losses to be covered by sources other than its fund.

Practice shows that operating and dedicated subsidies are insufficient and that losses often seem inevitable. In its 2021 report on Warsaw, the Supreme Audit Office found that 'the reference this rule makes to costs, not spending financed from the subsidy, does not allow for the proper settlement of subsidies in accordance with the Public Finances Act or for the return of unused subsidies before the end of a year. This is, among other things, because costs include various components unrelated to the spending of operating subsidies. This applies to the costs of depreciation of immovable assets, of programmes cultural institutions finance from dedicated subsidies, and costs covered from their own resources'³⁰. Local authorities should therefore be more responsive to cultural institutions' day-to-day and capital needs. Enhanced supervision of their operations is also desirable, above all with respect to the use of public resources for statutory purposes. In this regard, the Audit Office calls for internal regulations that would enable operating subsidies to be settled against cultural institutions' actual expenditure in a given budgetary year. It also recommends more intensive control and audit activity by local authorities.

De lege ferenda, there is also a need to guarantee adequate long-term funding for cultural institutions. An organiser's long-term financial plan, according to which an institution's director could prepare operating plans, would help to determine appropriate subsidies. Authors propose adding a Section 2 to Article 12 of the Organisation and Administration of Cultural Activities Act: 'In agreements concerning organisation and financial terms, organisers shall specify the amounts of funding required to ensure the conduct of cultural activity and the maintenance of facilities during the director's term in office' (Ilczuk et al. 2020, 43). In this way, artistic and statutory activity would enjoy

30 Available at: <https://www.nik.gov.pl/aktualnosci/finanse-instytucji-kultury-warszawy.html> [accessed 11 June 2024].

guaranteed funding regardless of any liabilities or adverse financial results of cultural institutions.

Adequate wages in cultural institutions are equally essential. The Association of Polish Counties' opinion on a private member's bill to amend the Additional Annual Salaries for Budget Sector Employees Act is commendable, as it would restore the right to the so-called end-of-year bonus for cultural institution personnel. The bill estimates that providing this additional payment would cost less than PLN 470 million, including approximately PLN 323 million for local institutions, PLN 21.5 million for county institutions, and PLN 125.5 million for regional institutions³¹. In fact, this postulate follows directly from Article 27 of the Organisation and Administration of Cultural Activities Act, under which the legislator undertakes to manage the finances of cultural institutions by making effective use of available public resources (Mituś 2021, 15–18).

I would conclude by pointing to certain questionable measures, ostensibly intended to guarantee the financial security of cultural institutions but in practice serving as a pretext for interfering in their activities. The growing number of jointly administered institutions in recent years is a case in point³². *Ad hoc* amendments to their statutes, designed to secure a final say over artistic programmes, are unacceptable in light of Article 5 of the Polish Constitution.

References

- Ćwikła, Małgorzata. "Fabryka inicjatyw, kopalnia pomysłów: wykorzystanie obiektów postindustrialnych w działalności kulturalnej jako impuls do twórczego zarządzania", *Zarządzanie Kulturą*, vol. 3(2020): 261–266.
- Głowacki, Jakub, Hausner, Jerzy, Jakóbik, Krzysztof, Markiel Krzysztof, Mituś, Ambroży, and Żabiński, Michał. *Finansowanie kultury i zarządzanie instytucjami kultury*. Kraków: Uniwersytet Ekonomiczny w Krakowie, Małopolska Szkoła Administracji Publicznej, 2010.
- Grząba, Małgorzata. "Stabilność finansowania kultury ze środków publicznych w Polsce", in *Współczesne problemy ekonomiczne w badaniach młodych naukowców. Tom 4 Teoria i praktyka*, ed. by Ewa Gruszevska. Białystok: Wydawnictwo Uniwersytetu w Białymstoku, 2020.

31 Available at: <https://samorząd.pap.pl/kategoria/praca/powiaty-o-trzynastkach-dla-pracownikow-kultury-tak-ale-ze-zrodlem-finansowania> [accessed 12 June 2024].

32 Available at: https://www.rdc.pl/aktualnosci/kultura/minister-kultury-hanna-wroblewska-wywiad-pap-sienkiewicz_K8BZXRidgTfBIOodrorh [accessed 12 June 2024].

- Hołda, Joanna, Hołda, Zbigniew, and Ostrowska, Dorota. *Prawne podstawy działalności kulturalnej*. Kraków: Wolters Kluwer Polska, 2005.
- Kołaczkowski, Bartosz, and Ratajczak, Małgorzata. "Dotowanie instytucji kultury w świetle niekomercyjnego charakteru tych jednostek". *Prawo Budżetowe Państwa i Samorządu*, no. 4 (2021): 9–27.
- Kołaczkowski, Bartosz, and Ratajczak, Małgorzata. "Uzupełniające źródła finansowania instytucji kultury – działalność gospodarcza (usługi, handel, gospodarowanie mieniem), lokowanie wolnych środków oraz sponsoring". *Prawo Budżetowe Państwa i Samorządu*, no. 1/10 (2022): 79–101.
- Ilczuk, Dorota, Smół, Mateusz, and Szadowiak, Marta. *System finansowania instytucji kultury w Polsce. Opinie i ekspertyzy OE-319*. Warszawa: Kancelaria Senatu, 2020.
- Liżewski, Sławomir. *Nieprawidłowości w gospodarce finansowej instytucji kultury*. LEX el, 2021.
- Maj-Waśniowska, Katarzyna and Sołtyk, Piotr. "Dysfunkcje w obszarze dotacji podmiotowych dla samorządowych instytucji kultury". *Samorząd Terytorialny*, no. 11 (2018): 52–67.
- Mielko, Cezary. "Administracja samorządowa i instytucje kultury w województwie podlaskim. Podstawy regionalnej polityki publicznej". *Studia z Polityki Publicznej*, no. 4/3/15 (2017): 99–126.
- Mituś, Ambroży. "Tworzenie i funkcjonowanie instytucji kultury", in *Vademecum dyrektora instytucji kultury*, ed. by Iwona Fischer, Tomasz Krywan, Michał Kunikowski, Sławomir Liżewski, Małgorzata Mędrala, Ambroży Mituś, Ewa Ostapowicz, Kazimierz Pawlik, Ewa Perłakowska, Marek Rotkiewicz, Jakub Słupski, Krzysztof Szocik, Sebastian Tyrakowski, and Karolina Maria Wojciechowska. Warszawa: C.H. Beck, 2021: 3–16.
- Modzelewska, Marlena, and Kukołowicz, Tomasz. *Finansowanie kultury przez samorządy. Plany, wykonania i realizacja wydatków na kulturę*. Warszawa: Narodowe Centrum Kultury, 2015.
- Musiał-Gąsiorowska, Anna. "Prawne i organizacyjne aspekty popularyzacji dziedzictwa kulturowego – pryncypia". *Przegląd Prawa Publicznego*, no. 3 (2019): 27–37.
- Orankiewicz, Agnieszka. "Sponsoring w sektorze kultury w Polsce – bariery rozwoju", in *Ekonomia i zarządzanie w teorii i praktyce. Tom 7. Współczesne problemy finansów, rachunkowości i zarządzania*, ed. by Ewa Walińska. Łódź: Wydawnictwo Uniwersytetu Łódzkiego, 2013: 77–86.
- Szara, Katarzyna. "Finansowanie kultury przez jednostki samorządu terytorialnego w gminach Podkarpacia". *Finanse Komunalne* no. 5 (2017): 15–27.
- Szlendak, Tomasz, Nowiński, Jacek, and Wieczorek, Piotr. *Podręcznik szkoleniowy dotyczący sektora kultury w Polsce dla wnioskodawców i partnerów Programu „Promowanie różnorodności kulturowej i artystycznej w ramach europejskiego*

dziedzictwa kulturowego" finansowanego z funduszy EOG 2009–2014. Warszawa: C.H. Beck, 2012.

Szulborska-Łukaszewicz, Joanna. "Instytucje kultury w Polsce – specyfika ich organizacji i finansowania", *Zarządzanie w kulturze*, no. 13 (2012): 305–328.

Throsby, David. *Economics and Culture*. Cambridge: University Press, 2014.

Wieczorek, Piotr. *Instytucje kultury*. Warszawa: C.H. Beck, 2011.

List of Contributors

Professor Agata Barczewska-Dziobek

The University of Rzeszów, Poland

e-mail: abarczewska@ur.edu.pl; <https://orcid.org/0000-0002-751409219>

Professor Imelda Chłodna-Błach

John Paul II Catholic University of Lublin, Poland

e-mail: imelda.chlodna-blach@kul.pl; <https://orcid.org/0000-0003-1606-7552>

Professor Anna Dąbrowska

Kazimierz Pułaski University of Radom, Poland

e-mail: anna.dabrowska@urad.edu.pl; <https://orcid.org/0000-0001-7843-3816>

Tomasz Dąbrowski, PhD

Kazimierz Pułaski University of Radom, Poland

e-mail: t.dabrowski@urad.edu.pl; <https://orcid.org/0000-0001-6184-140X>

Professor Katarzyna Głąbicka-Auleytner

Kazimierz Pułaski University of Radom, Poland

e-mail: k.auleytner@urad.edu.pl; <https://orcid.org/0000-0003-3370-1287>

Emilia Gulińska, PhD

Kazimierz Pułaski University of Radom, Poland

e-mail: e.gulinska@urad.edu.pl; <https://orcid.org/0000-0002-1106-5067>

Professor Tetyana Karabin

Uzhhorod National University, Ukraine

e-mail: tetyana.karabin@uzhnu.edu.ua; <https://orcid.org/0000-0002-6538-5269>

Professor Helena Kisilowska

Kazimierz Pułaski University of Radom, Poland

e-mail: h.kisilowska@urad.edu.pl; <https://orcid.org/0000-0003-3671-5457>

Piotr Kobylski, PhD

Kazimierz Pułaski University of Radom, Poland

e-mail: p.kobylski@urad.edu.pl; <https://orcid.org/0000-0002-0345-904X>

Mirostaw Kopeć, PhD

Kazimierz Pułaski University of Radom, Poland

e-mail: m.kopec@urad.edu.pl; <https://orcid.org/0000-0002-4702-9228>

Piotr Krzyżanowski, PhD

Kazimierz Pułaski University of Radom, Poland

e-mail: p.krzyzanowski@urad.edu.pl; <https://orcid.org/0000-0002-8769-5815>

Agnieszka Łozińska-Piekarska, PhD

Kazimierz Pułaski University of Radom, Poland

e-mail: a.piekarska@urad.edu.pl; <https://orcid.org/0000-0003-1028-1814>

Małgorzata Pracka, PhD

Kazimierz Pułaski University of Radom, Poland

e-mail: m.pracka@urad.edu.pl; <https://orcid.org/0000-0003-3531-8433>

Bartłomiej Składanek, PhD

Kazimierz Pułaski University of Radom, Poland

e-mail: b.skladanek@urad.edu.pl; <https://orcid.org/0000-0001-9915-4218>

Dominika Skoczylas, PhD

University of Szczecin, Poland

e-mail: dominika.skoczylas@usz.edu.pl; <https://orcid.org/0000-0003-1231-8078>

Professor Joanna Smarż

Kazimierz Pułaski University of Radom, Poland

e-mail: j.smarz@urad.edu.pl; <https://orcid.org/0000-0002-2450-8162>

Professor Anna Spólna

Kazimierz Pułaski University of Radom, Poland

Witold Gombrowicz Museum at Wsola, Poland

e-mail: a.spolna@urad.edu.pl; <https://orcid.org/0000-0002-4541-6929>

Paweł Śwital, PhD

Kazimierz Pułaski University of Radom, Poland

e-mail: p.swital@urad.edu.pl; <https://orcid.org/0000-0002-7404-5143>

Professor Mariusz Wieczorek

Maria Curie-Skłodowska University in Lublin

e-mail: mariusz.wieczorek@mail.umcs.pl; <https://orcid.org/0000-0003-4727-0895>

Professor Wojciech Wojtyła

Kazimierz Pułaski University of Radom, Poland

e-mail: w.wojtyla@urad.edu.pl; <https://orcid.org/0000-0002-5482-705X>

Professor Kamil Zeidler

University of Gdańsk

e-mail: kamil.zeidler@ug.edu.pl; <https://orcid.org/0000-0002-8396-3608>

Monika Żuchowska-Grzywacz, PhD

Kazimierz Pułaski University of Radom, Poland

e-mail: m.zuchowska@urad.edu.pl; <https://orcid.org/0000-0001-5336-6864>