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Cultural heritage law as one of three dimensions of the aesthetics of law

1. Introduction

The aesthetics of law covers the relations that exist between what is broadly understood as law and what is broadly understood as art. The latter is the source of aesthetic values and corresponding aesthetic experiences. Although the aesthetics of law in various approaches, contexts, and methods is widely described in foreign literature, e.g., English or German texts, in Poland it is a relatively recent and inspiring trend, falling within the scope of research into the philosophy of law. As Jerzy Zajadło notes, it is the fifth forgotten element of the philosophy of law, functioning alongside ontology, epistemology, logic, and ethics.¹

Despite the fact that the popularity of this field is still growing, its individual manifestations can be found in various areas of life. Therefore, we can distinguish three different dimensions of the aesthetics of law – internal, external, and what Kamil Zeidler calls “law as a tool of aestheticization”.² This division is made not from a subjective perspective, but from the perspective of the subject of research, which is law.³ Consequently, the external dimension deals with various kinds of cultural goods, primarily works of fine art and literary works, which refer to the law and its phenomena and symbols. The internal dimension focuses on law as an object of aesthetics, which concerns both the shape and form of law and its content. The third dimension of the aesthetics of law – law as a tool of aestheticization – considers law in its functional aspect, when it becomes “a tool of aestheticization” of everyday life, largely by means of legal regulations. This article focuses on this third dimension.

Since the law is a bearer of certain values, it can also be a bearer of aesthetic values and, thus, it can perform the function of aestheticizing everyday life. This takes place

¹ J. Zajadło, “Estetyka – piąty zapomniany członek filozofii prawa”, *Ruch Prawniczy, Ekonomiczny i Socjologiczny* 2016, no. 4, pp. 17–18.

² K. Zeidler, *Estetyka prawa*, Gdańsk – Warszawa 2018, p. 40; also: *idem*, *Aesthetics of Law*, Gdańsk – Warsaw 2020, p. 40.

³ K. Zeidler, *Aesthetics of Law...*

in three basic ways. First, it does so with the help of legal norms that set and promote certain aesthetic standards.⁴ Second, legal norms can serve to protect and preserve aesthetic values.⁵ Third, law as a political instrument can be used to combat certain aesthetic values.⁶ Cultural heritage law is one of the areas that bring together the first two categories; this can be seen in the general principles of this branch of law, as well as in specific legal acts that constitute it. The aim of this article is to present how cultural heritage law can be perceived as a “tool of aestheticization” within the Polish legal system.

2. Aesthetics of law

The possibility of combining law and aesthetics results primarily from the changes that have taken place in contemporary concepts of perceiving aesthetics itself in the twentieth century. Aesthetics is no longer only associated with art and a work of art and the aesthetic experiences that accompany them. The leading theses of pragmatic aesthetics have become the de-aestheticization of art and the aestheticization of everyday life.⁷ Pragmatic aesthetics suggests that aesthetic experiences, unsatisfied through art, will be satisfied in a different way, with the help of objects and phenomena surrounding the recipient. As a result, the law, omnipresent in our everyday life, has become the subject of aesthetics.

From the very beginning, the juxtaposition of law and aesthetics has raised many doubts and controversies, resulting mainly from the fact that aesthetics, associated primarily with art, shows remarkable plasticity and changeability, while the law is characterized by a certain rigidity and formalism. The issues of the aesthetics of law were earlier noticed by Gustav Radbruch, who in his *Rechtphilosophie* published in 1932 included a chapter on “Ästhetik des Rechts”:⁸ There he points out that the law, like other products of culture, needs means of expression – symbolism, language, gestures, insignia, and architecture – which, in turn, can be subject to aesthetic evaluation.⁹ Hence, early authors distinguish aesthetic research into law, research that was later developed in various perspectives, contexts, and methods by Anglo-Saxon legal literature. A well-known verdict by Peter Schlag is that “law is an aesthetical enterprise”,¹⁰ and it is in this spirit that the relationship between law and aesthetics was very often seen in the past.

In the last decade, the concept of the aesthetics of law, thanks to the achievements of the Gdańsk school of theory and philosophy of law, has also attracted special

⁴ *Ibidem*, p. 74.

⁵ *Ibidem*.

⁶ *Ibidem*.

⁷ B. Dziemidok, *Główne kontrowersje estetyki współczesnej*, Warszawa 2012, p. 138; see: R. Shusterman, *Pragmatist Aesthetics: Living Beauty, Rethinking Art*, 2nd ed., Oxford 2000.

⁸ K. Zeidler, *Aesthetics of Law...*, p. 37.

⁹ G. Rabruch, *Filozofia prawa*, Warszawa 2009, pp. 116–117.

¹⁰ P. Schlag, “The Aesthetic of American Law”, *Harvard Law Review* 2002, no. 115, p. 1049.

attention in Polish legal discourse. In this context, the work of J. Zajadło¹¹ in the area of legal-philosophical reflection, and of K. Zeidler¹² in the area of legal-theoretical considerations, are particularly important.

Jerzy Zajadło, juxtaposing the required features of law, that is that it be certain (*certa*), written down (*scripta*), strict (*stricta*), and prior (*praevia*), with the classic fields of philosophy, that is, ontology, epistemology, logic, and ethics, asks the question: “should *lex* not also be *pulchra* (beautiful)?”.¹³ This prompts him to suggest a fifth element of the philosophy of law – the aesthetics of law. In turn, K. Zeidler, drawing on Polish and foreign scholarly discussions developed over the last few years, systematically organizes them, thus dividing the aesthetics of law into an external dimension, an internal dimension, and what he calls “law as a tool of aestheticization”. Zeidler also analyzes the entire matter in depth and proposes further possible directions for the development of the aesthetics of law.

The aesthetics of law uses a variety of research methods, characteristic of various scholarly approaches and fields of knowledge within the humanities and social sciences, as well as the entire instrumentation of legal studies and methods developed on the basis of aesthetics.¹⁴ This allows us to see that the aesthetics of law is a very fertile interdisciplinary field, as is demonstrated below.

3. Three dimensions of the aesthetics of law

As mentioned above, the aesthetics of law includes three dimensions: an internal one, an external one, and what K. Zeidler calls “law as a tool of aestheticization”. This division is made not from a subjective perspective, but from the perspective of the subject of research, which is law.¹⁵ This means that the identification of the relationship between law and aesthetics and of law as a bearer of aesthetic values, and also of these values themselves, comes to the fore. Consideration how this affects the recipients of law and what aesthetic experiences are induced in them comes subsequently.¹⁶

The subject of the aesthetics of law from an internal perspective is law itself,¹⁷ understood in a broad sense. This involves treating the law, not only in the form of legal acts, but also in terms of jurisprudence and legal activity, as a bearer of aesthetic

¹¹ See: J. Zajadło, “Graficzny obraz systemu prawa: prawo, estetyka, estetyka prawa?”, *Acta Universitatis Wratislaviensis. Przegląd Prawa i Administracji* 2016, vol. CIV; *idem*, “Prawo, estetyka, estetyka prawa?”, *Edukacja Prawnicza* 2015, no. 3(159).

¹² See: K. Zeidler, “Estetyka prawa – ujęcie zewnętrzne i wewnętrzne” [in:] *Integracja zewnętrzna i wewnętrzna nauk prawnych*, part 2, eds. M. Król, A. Bartczak, M. Zalewska, Łódź 2014; K. Zeidler, “Estetyka prawa: ekslibris prawniczy”, *Gdańskie Studia Prawnicze* 2017, vol. 38.

¹³ J. Zajadło, “Estetyka – piąty zapomniany człon...”, p. 18.

¹⁴ K. Zeidler, *Aesthetics of Law...*, p. 11.

¹⁵ *Ibidem*, pp. 21–22.

¹⁶ *Ibidem*.

¹⁷ *Ibidem*, p. 57.

values, and, consequently, as a source of corresponding experiences and assessments. This makes it possible to use aesthetic instruments to study law – both its individual branches¹⁸ and, even, an entire legal system.¹⁹

If one starts with the issue of creating law and its effects in the form of a legal act, it can be seen that the law-making process is, in fact, a type of creativity. Since a requirement of creativity is the novelty of an action or work, the law-making process is, in fact, a creative activity, the result of which is a piece of work, with all its required features.²⁰ Such a piece of work, i.e., a legal act, may be a source of various impressions and aesthetic experiences, which, of course, is not the goal of the legislator in itself, but it testifies to the existence of wider manifestations of “legislative art”. Simplicity of language, consistency of content, correct and harmonious structure, compliance with the formal conditions and rules of legislative technique – all these factors contribute to the beauty of a legislative act and evoke aesthetic experiences in the recipient.

A similar situation occurs in the process of applying the law – judges become creators creating their work, i.e., a judgment. In addition to the process of interpreting the law itself, aesthetic impressions can also be provided by a ruling, on the same principle as in the case of a legal act – through coherence, harmonious structure, or artistic language. The legal language of legal acts itself can also be a source of various aesthetic values. Characterized by specific vocabulary, stiffness, and roughness, it apparently seems to be devoid of any emotions. However, nothing could be further from the truth. The recipient dealing with legal language feels the importance of the legislator and the legislator’s self-confidence, which puts him/her in a serious mood.

The aesthetics of law in its external dimension deals with the manifestations of law, its motifs, symbols, and signs that have been represented for centuries in the fine arts.²¹ From antiquity, legal issues have inspired artists to include it in their works, regardless of whether they themselves had any experience with the law or were just passive observers. As G. Radbruch notes, law may be “material for art”, and as such it certainly falls within the scope of aesthetic evaluation.²² However, as J. Zajadło emphasizes, the subject of evaluation here is not the law (broadly understood), but the artist’s work itself,²³ one in which legal elements help to make the final aesthetic effect. There are countless manifestations of law in culture – starting with its symbols, through pictorial signs, legal rhetoric, and ending with legal motifs that can be seen in art, literature, and cinematography. Indeed, film making arouses the most emotions and provides the most examples for the external perspective of the aesthetics of law.

Recurrent motifs inspiring painters over the centuries have been mainly: The Last Judgment (e.g., *The Last Judgment* by Hans Memling), human judgments (e.g., *The Court* and *A Famous Cause* by Honoré Daumier), the image of Themis (e.g., Raphael and

¹⁸ See: E. Morgan, *The Aesthetic of International Law*, Toronto 2007.

¹⁹ See: P. Schlag, “The Aesthetic...”, pp. 1049–1118.

²⁰ K. Zeidler, *Aesthetics of Law...* pp. 58–59.

²¹ *Ibidem*, p. 51.

²² G. Radbruch, *Filozofia prawa...*, p. 116.

²³ J. Zajadło, “Estetyka – piąty zapomniany człon...”, p. 25.

his *lustitia*, and on many frescoes), crime, guilt, punishment, and its execution (e.g., *The Execution of Lady Jane Grey* by Hyppolite Delaroche), and lawyers themselves (e.g., *Les Avocats* by Honoré Daumier). Also noteworthy is Gustav Klimt's painting *Jurisprudenz*, in which he presents a shocking picture of the law, showing the ugliness of its crudeness and randomness, which is intended to be an expression of what the law really is.²⁴

The most widespread studies in the field of the aesthetics of law in an external perspective concern the relationship between law and literature, which is expressed in a separate research trend known as law and literature.²⁵ As part of this, we can distinguish, on the one hand, an external frame of this field – law in literature, which focuses on the identification and analysis of legal motifs in literary texts.²⁶ On the other hand, we can note an internal frame – law as literature, which focuses on considerations regarding the literary value of legal acts and applies to them methods that have been developed by literary scholars. This also treats law as a form of narrative, and legislative activity as linguistic and literary creation.

Apart from the two above mentioned manifestations of the aesthetics of law, many more can be distinguished, such as legal cinematography,²⁷ which is considered as a special kind of law and literature, or the relationship between law and music.²⁸ However, describing each manifestation of the aesthetics of law goes beyond the scope of this article.

The third and the last dimension of the aesthetics of law refers to the law as "a tool of aestheticization" of everyday life. This focuses on the aesthetic function of law, implemented mainly by legal regulations and the legal norms they contain, which are the determinants of what is aesthetic. However, it should be emphasized that the law itself is not a bearer of aesthetic values here, but rather the phenomena that are regulated by the law. Thus, the description and criteria for aesthetic evaluation are derived from external sources.²⁹

We can distinguish three basic fields in which the law can affect the aestheticization of everyday life: 1) legal norms that set and promote certain aesthetic standards;

²⁴ See: D. Manderson, "Klimt's *Jurisprudenz* – Sovereign Violence and the Rule of Law", *Oxford Journal of Legal Studies* 2015, vol. 35, issue 35, pp. 515–542.

²⁵ See: I. Ward, *Law and Literature: Possibilities and Perspectives*, Cambridge – New York – Melbourne 1995; B. Cordozo, "Law and Literature", *Yale Law Journal* 1939, vol. 48, no. 3; R. Posner, *Law and Literature*, 3rd ed., Cambridge 2009; *Prawo i literatura. Parerga*, eds. J. Kamień, J. Zajadło, K. Zeidler, Gdańsk 2019; *Prawo i literatura. Szkice*, eds. J. Kuisz, M. Wąsowicz, Warszawa 2015.

²⁶ The works of Sophocles, William Shakespeare, Victor Hugo, Charles Dickens, Fyodor Dostoyevsky and Franz Kafka are of particular interest in this area.

²⁷ Among many popular legal films can be distinguished, for example, *Anatomy of a Murder* (dir. Otto Preminger, USA, 1959), *The Verdict* (dir. Sidney Lumet, USA, 1982), *My Cousin Vinny* (dir. Jonathan Lynn, USA, 1992), *The Shawshank Redemption* (dir. Frank Darabont, USA, 1994), *A Time to Kill* (dir. Joel Schumacher, USA, 1996), *Devil's Advocate* (dir. Taylor Hackford, USA, 1997), and *The Lincoln Lawyer* (dir. Brad Furman, USA, 2011).

²⁸ See: E. Łętowska, K. Pawłowski, *O operze i o prawie*, Warszawa 2014; E. Łętowska, "Communicare et humanum, et necesse est – o komunikacyjnej misji muzyków i prawników", *Monitor Prawniczy* 2005, no. 1, pp. 3–7.

²⁹ K. Zeidler, *Aesthetics of Law...*, p. 74.

2) legal norms that serve to protect and preserve aesthetic values; and 3) the field where law, as an instrument of politics, can be used to combat certain aesthetic values that are inconsistent with the ideology promoted by the ruling class. This last field is often discussed as art in the service of state power.³⁰

The first group of norms is used to establish an overall concept of “the beautiful”, but when one interprets these legal regulations, one sees that there is something more to it than this: the regulations promote aesthetic standards and values through legal norms.³¹ A good example of the implementation of this function is the *Uchwała krajobrazowa Gdańska* [Gdańsk Landscape Resolution],³² aimed at defining the rules for placing advertising media, elements of small-scale architecture, and fences in public space. The previous lack of uniform rules for the placement of such objects has led to the phenomenon of the marginalization, degradation, and often even disfigurement of many areas of the city. This resolution offers a kind of aesthetic concept for the city; it becomes a reference point in creating its aesthetic appearance and an instrument for creating a harmonious, clean, and aesthetic space. It also aims at the aesthetic unification of city districts, which through it are to become free from advertising chaos. The resolution contains specific guidelines regarding the size, color, construction, and type of building material for individual structures. For example, para. 5(2) of the Resolution prescribes for small-scale architectural structures, *inter alia*, the use of commonly accepted building materials, in particular glass, stone, concrete, plastics, wood, metals, and their composites. Further in para. 7(2) letter c), in relation to advertising boards, the use is required of lighting of constant intensity and white color when illuminating or backlighting advertising boards or advertising devices. As can be seen, the whole regulation aims to promote and highlight the aesthetic values of the city, by setting certain aesthetic standards for public space.

The second group of legal norms includes a number of legal regulations where aesthetic issues are very important: *inter alia*, the cultural heritage law, which will be discussed in more detail later in this article, but also the Act of 7 October 1999 on the Polish language (consolidated text: *Journal of Laws* of 2021, item 672) and the Act of 4 February 1994 on Copyright and Related Rights (consolidated text: *Journal of Laws* of 2019, item 1231, as amended). This category of standards is primarily aimed at providing protection to certain goods or objects, which, at the same time, are the source of certain aesthetic values, and, thus, the subject of protection is also these very values. For example the Act on the Polish language, in art. 1 point 1, regulates the protection of the Polish language, protection which, in accordance with art. 3 para. 1 point 1 consists, in particular, in attempting to ensure correct use of the language and to improve the linguistic proficiency of its users, as well as to create conditions for the

³⁰ *Ibidem*, pp. 74–75.

³¹ *Ibidem*, p. 76.

³² Resolution No. XLVIII/1465/18 of the Gdańsk City Council of February 22, 2018 on establishing the rules and conditions for the location of small architectural objects, advertising boards, advertising devices and fences, their dimensions, quality standards and types of building materials from which they can be made, in the City of Gdańsk.

proper development of the language and to prevent its vulgarization. These are a kind of regulation aimed at maintaining appropriate language standards, including formal and, therefore, aesthetic standards. The issue of law as an instrument of politics is seen in the fact that law sometimes has served and, indeed, serves still to combat specific aesthetic values inconsistent with the ideology promoted by the ruling political party in the state. Art has been one of the tools of exercising power in authoritarian and totalitarian countries, and the aesthetics associated with this art has served a propaganda function. However, this, in turn, has often exposed the corruption of the power system, and so it has been, in fact, in a sense an anti-aesthetics.³³

Among these three basic areas where the law can affect the aestheticization of everyday life, I would like to pay special attention to cultural heritage law as “a tool of aestheticization”, and to consider its norms aimed at the promotion, protection, and preservation of aesthetic values.

4. Cultural heritage law as “a tool of aestheticization”

Cultural heritage law is actually recognized as a comprehensive branch of law,³⁴ i.e., a separate set of legal norms based on specific criteria, such as the purpose and subject of regulation, distinct regulatory methods, and distinct principles or forms of codification. A special feature of cultural heritage law is its interdisciplinarity and multidisciplinary. This means that, on the one hand, there is no single act encompassing the entire content of the protection of cultural heritage. Thus, cultural heritage protection contains regulations in the field of constitutional law, criminal law, administrative law, and civil law, etc. On the other hand, cultural heritage law extends far beyond the scope of the law itself, and the issue of protection also requires drawing on the achievements of, *inter alia*, the history of art, aesthetics, architecture, science, and many more disciplines. For the purposes of this article, I would like to limit my discussion to legal issues, and, thus, indicate how the norms contained in the Polish legal acts regulating the protection of cultural heritage, but also the principles of cultural heritage law, can be a tool for the aestheticization of everyday life.

Starting with the principles of cultural heritage law, as with the foundation of every branch of law, it should be stipulated that the catalog of these principles covers: firstly, the general principles of the legal system; secondly, the principles of individual branches of law that are relevant to the protection of cultural heritage; and thirdly, the principles specific to this comprehensive branch of law alone, which, however, can also be general principles of law or the principles of its individual branches, although,

³³ J. Zajadło, “Estetyka – piąty zapomniany człon...”, pp. 22–23.

³⁴ See: K. Zeidler, “Prawo ochrony dziedzictwa kultury jako nowa gałąź prawa” [in:] *Prawo ochrony zabytków*, ed. K. Zeidler, Warszawa – Gdańsk 2004, pp. 23–33; *idem*, “Zasady prawa ochrony dziedzictwa kultury – propozycja katalogu”, *Ruch Prawniczy, Ekonomiczny i Socjologiczny* 2018, vol. LXXX, no. 4, pp. 147–154.

nevertheless, they specify the content of these principles on the basis of cultural heritage law.³⁵

First of all, the constitutional principles involved need to be indicated. Article 5 of the Polish Constitution introduces the principle of protection of cultural heritage and explicitly indicates that the Republic of Poland protects its national heritage. The term "national heritage" used here has a narrower scope of meaning than "cultural heritage", and, as K. Zeidler points out, it requires an interpretative correction, as its linguistic interpretation leads *ad absurdum*, concluding *a contrario* that there is no obligation to protect heritage that is not national heritage. Thus, it should be considered that this principle of protection is based on the Constitution, but its content requires a broader systematic approach.³⁶ Cultural heritage and national heritage, included in scope of cultural heritage, is defined by Jan Pruszyński as a composite of immovable and movable objects along with associated spiritual values, and historical and moral phenomena. These are considered as subject to legal protection for the good of a specific society and its development. They are considered worthy of transfer to future generations on the basis of understandable and accepted historical, patriotic, religious, scientific/scholarly, and artistic values, which are important for the identity and continuity of political, social, and cultural development, for expressing truths, for commemorating historical events, and for cultivating a sense of beauty and a civilized community.³⁷ There is no doubt, therefore, that cultural heritage is also a source of aesthetic values that are constitutionally protected along with the object they accompany. Moreover, the Constitution of the Republic of Poland, in art. 6, determines that the Republic of Poland creates conditions for the dissemination and equal access to cultural goods, and in art. 73 it grants a subjective right, stating that everyone is guaranteed the freedom to use cultural goods. This allows for a wide promotion of aesthetic values in society, by enabling equal access to the objects that are their source.

The principle of cultural heritage management involves a departure from the idea of protection understood as leaving an object of protection unchanged and accepts interference with the substance of a monument or changing its used properties, so that the object and its aesthetic values can be properly preserved and used. Preservation and conservation of aesthetic values are also related to the principle of supervising the condition of monuments, most often under the control of a monument conservation agency.

With regard to the issue of legal regulations, the basic legal act regulating cultural heritage protection is the Act of 23 July 2003 on the protection and preservation of monuments (consolidated text: *Journal of Laws* of 2021, item 710). The first references to aesthetic values can be seen in the definition of a monument. According to art. 3 point 1, a monument is real estate or movable property, their parts or units, which is the product of human work or is related to human activity, and bears testimony to

³⁵ K. Zeidler, "Zasady prawa ochrony dziedzictwa kultury...", p. 149.

³⁶ *Ibidem*, p. 150.

³⁷ J. Pruszyński, *Dziedzictwo kultury Polski. Jego straty i ochrona prawna*, vol. 1, Kraków 2001, p. 50.

a bygone era or events, the preservation of which is in the public interest due to the object's historical, artistic, or scientific/scholarly value. Although the legislator does not refer directly to aesthetic value, but rather to artistic value (which does not mean the same),³⁸ nevertheless, these two terms refer to a similar set of objects and their scope to some extent overlaps – for example, when a given object demonstrating originality in an artist's work is also able to evoke an aesthetic experience.³⁹

The Act also indicates a number of activities that may be undertaken in relation to a monument. These include, among others: conservation work which, in accordance with art. 3 point 6, means activities aimed at securing and preserving the substance of the monument, stopping the processes of its destruction, and documenting those activities; restoration works (art. 3 point 7), i.e., activities aimed at exposing the artistic and aesthetic (*sic!*) values of the monument, including, if necessary, supplementing or recreating its parts, and documenting these activities; and conservation research (art. 3 point 9), i.e., activities aimed at recognizing the history and functions of a monument, determining the materials and technologies used for its construction, determining the state of preservation of this monument, developing a diagnosis, design, and work program for conservation experts, and establishing whether there is, indeed, a need for a restoration program. These activities are aimed at ensuring adequate protection and preservation of the monument, and, thus, also at securing its aesthetic values. This is confirmed by art. 4 point 2, pursuant to which public administration bodies take steps to prevent threats that may cause damage to the value of monuments, including, it can be assumed, also its aesthetic ones. In turn, according to art. 5, the care of a monument, exercised by its owner or possessor, consists in particular, *inter alia*, in securing and maintaining the monument and its surroundings in the best possible condition (point 3) and using the monument in a way that ensures the permanent preservation of its value (point 4).

Values, broadly understood, and therefore also aesthetic values, are also required when a monument is included in a given form of protection other than entry in the register of monuments – inscription in the List of Heritage Treasures, recognition as a historical monument, and as part of the creation of a cultural park. According to art. 14a of the Act of 2003 on the protection and preservation of monuments, The List of Heritage Treasures is intended only for movable monuments of special value for cultural heritage, those included in one of the exhaustively listed categories, including, *inter alia*, specified paintings, sculptures, statues, interior design elements, and works of artistic craftsmanship (i.e., objects that are a substantial source of aesthetic value). Article 15 of the Act indicates that an immovable monument entered in the register of monuments or as part of a cultural park and designated as of special value for culture

³⁸ See: R. Stecker, "Why Artistic Value is not Aesthetic Value" [in:] *idem, Intersections of Value: Art, Nature, and the Everyday*, Oxford 2019; A. Sauchelli, "Aesthetic Value, Artistic Value, and Morality" [in:] *The Blackwell Companion to Applied Philosophy*, eds. D. Coady, K. Brownlee, K. Lipper-Rasmussen, Oxford 2016, pp. 514–52; M. Żelazny, "Wartości artystyczne i wartości estetyczne" [in:] *idem, Estetyka filozoficzna*, Toruń 2009, pp. 89–95.

³⁹ K. Zeidler, *Aesthetics of Law...*, pp. 30–31.

may be recognized as a historical monument. In turn, according to art. 16, a cultural park can be established in order to protect the cultural landscape and to preserve the landscaped areas along with immovable monuments characteristic of local building and settlement traditions. In art. 17, the legislator adds what actions can be taken to preserve the aesthetics of a cultural park, pointing that there may be established prohibitions and restrictions on: 1) carrying out construction work and industrial, agricultural, animal breeding, commercial, or service activities; 2) changes in the use of immovable monuments; 3) placing boards, inscriptions, advertisements, and other signs not related to the protection of the cultural park, with the exception of road signs and signs related to the protection of public order and safety; 3a) the rules and conditions for the location of small architecture objects; and 4) waste storage or warehousing.

In further parts of the Act of 2003 on the protection and preservation of monuments, there are also many other regulations relating to the value of a monument. Additional examples are: in accordance with art. 25, development for commercial purposes of an immovable monument entered in the register requires its owner or holder to have, *inter alia*, agreed with the voivodeship monument conservation agency on a program for the development of the immovable monument with its surroundings and the further use of this monument, taking into account the exposure of its value. In this case, the value will be also, and perhaps even above all, an aesthetic value. Also the activities of social guardians of monuments, indicated in art. 102 of the Act, consist in taking actions related to the preservation of the value of monuments, keeping them in the best possible condition, and disseminating knowledge about such monuments. These activities are, therefore, aimed at the protection of aesthetic values and their promotion in society.

The second important legal act that I would like to consider is the Act of 21 November 1996 on museums (consolidated text: *Journal of Laws* of 2020, item 902). Article 1 of the Act defines a museum and sets forth its mission. In accordance with this article, a museum is a non-profit organizational unit, the purpose of which is to collect and permanently protect the tangible and intangible natural and cultural heritage of humanity, and to inform the public about the values and contents of the collections, disseminating the basic values of Polish and world history, science, and culture, shaping cognitive and aesthetic (*sic!*) sensitivity, and providing access to its collections. It cannot be denied that exhibits, i.e., movables and real estate owned by the museum and entered in the inventory of museum items, are objects that constitute a rich resource of aesthetic values; they are often works of art, sculptures, or naturalia. The protection of these values, as well as their dissemination, is therefore the goal of the museum. This goal is implemented, in particular by: collecting monuments (art. 2 point 1); storing collected monuments, in conditions ensuring their proper condition and safety, and storing them in a manner that makes them available for scientific/scholarly purposes (art. 2 point 3); and the protection and conservation of collections and, as far as possible, the protection of immovable archaeological monuments and other immovable objects of material culture and nature (art. 2 point 4). It is worth noting at this point

that aesthetics in its broader sense also applies to nature;⁴⁰ so naturalia, placed in the museum, will certainly also exhibit aesthetic values.

Another legal act related to the protection of aesthetic values is the Act of 25 May 2017 on the restitution of national cultural property (consolidated text: *Journal of Laws* of 2019, item 1591). A cultural good is considered to be a monument, a movable property that is not a monument, and their component parts or complexes, the preservation of which is in the public interest because of their artistic, historical, or scientific/scholarly value, or because of their importance for heritage and cultural development (art. 3 point 1). Thus, the legislator again refers to artistic values, but, as I mentioned earlier, in most cases, apart from an aesthetic value, cultural goods also represent what are usually high aesthetic values. Restitution of cultural property is aimed at recovering, including achieving the return of, cultural goods lost by a Polish citizen, legal person established in the territory of Republic of Poland, and other entities mentioned by the Act, or recovering cultural goods that were removed from the territory of the Republic of Poland in violation of the law. Therefore, these are coordinated activities, based on internal cooperation – both of public administration bodies, and external ones – of various countries, the purpose of which is to find, secure, recover, including achieving the return of, cultural goods. In terms of the aestheticization of everyday life, this is a very important issue. Firstly, restitution influences the expansion of the catalog of cultural goods located in the territory of the Republic of Poland by bringing them back. Secondly, society has a better chance of getting to know these cultural goods and the values they hold, including aesthetic ones. The general availability of such objects permits widespread aesthetic experiences by society and their promotion. Thirdly, it is a form of a justice, and as Michał Mutermilch points out, “if, apart from these purely aesthetic emotions, a work of art evokes in us other experiences which have anything in common with truth, good or benefit, then such a work is called a work of ideas”.⁴¹ The aesthetic values of a cultural goods recovered through restitution, are therefore accompanied by other values, such as good, morality, and truth (as part of justice), which may further emphasize its aesthetic value and intensify the aesthetic experience.

Cultural heritage law also includes a number of other acts, such as the already mentioned Act on the Polish language or the Act of 27 June 1997 on libraries (consolidated text: *Journal of Laws* of 2019, item 1479), which also contain norms aimed at setting and promoting certain aesthetic standards, inextricably linked with cultural heritage, as well as their protection and conservation. However, for the purposes of this article, I would like to end with only these three cited examples, which accurately and clearly illustrate the issue of cultural heritage law as “a tool of aestheticization”.

⁴⁰ See: M. Budd, “Aesthetic of Nature”, *Proceedings of the Aristotelian Society* 2000, vol. 100, pp. 137–157.

⁴¹ M. Mutermilch, *Idea w sztuce*, Warszawa 1902, pp. 8–9.

5. Conclusions

Reflection on the aesthetics of law is a constantly developing the field in Polish legal studies. Legal-philosophical and legal-theoretical considerations constantly place it in a fresh light. There are many traces of the aesthetics of law in legal works, which we begin to notice when we begin to read legal acts, jurisprudence, and legal literature with a focus on searching for these elements, and then interpreting and developing them. This demonstrates how the aesthetics of law is an inspiring field offering very fertile ground for scholarship. Due to the ordering of this part of philosophy of law, it is important to divide it into three dimensions: external, internal, and the dimension that treats law as “a tool of aestheticization”.

The last approach brings together a number of legal acts the norms of which set, promote, protect, and preserve aesthetic values. However, it should be emphasized that the law itself is not a bearer of aesthetic values here, but rather the object that is the subject of legal norms; the criteria for assessing these values are external to the law.

Cultural heritage law is just one of “the tools for aestheticizing” everyday life. These tools are evident in its legal principles, which are the foundation of every branch of law. Further, the protection of aesthetic values appears at the level of constitutional norms, which indicate that the role of the Republic of Poland is to guard its national heritage and, more broadly, cultural heritage (thus, a rich source of aesthetic values), and also to create conditions for universal and equal access to cultural goods, and to guarantee the right to use them freely. These standards are further developed by acts of statutory rank.

The basic legal act is the Act on the protection and care of monuments, in which reference to artistic values (and, therefore, to some extent also aesthetic values) appears in the definition of a monument. The protection of monuments and the activities undertaken for that purpose aim at, on the one hand, preventing threats that may damage the value (including the aesthetic value) of monuments, and, on the other hand, at setting forth the artistic and aesthetic values of monuments. In accordance with the Act on museums, the mission of museums is also aimed at collecting and protecting the tangible and intangible natural and cultural heritage, informing the public about the values and contents of collections, shaping cognitive and aesthetic sensitivity, and enabling access to collections. The Act on the restitution of national cultural goods (also the restitution of cultural goods), which are objects of artistic, historical, or scientific/scholarly value, influences such anesthetization: it extends the catalog of cultural goods to include those objects that were previously unlawfully lost or seized, thanks to which society has a chance to become acquainted with such cultural goods. It is also a form of justice and it can enhance the aesthetic values of given goods.

This is just one of the many examples of legal acts in the field of protection of cultural heritage that, through their norms, contribute to the aestheticization of everyday life. Although the aesthetic values contained in legal norms, despite their institutional form, do not immediately dominate the consciousness of society, with time they

create new habits, becoming the basis for a new way of thinking and judging.⁴² The law of cultural heritage is just such a factor that instills new values, consolidates and protects existing values, and, at the same time, shapes the awareness of society. It clearly demonstrates the aesthetic function of law.

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⁴² K. Zeidler, *Aesthetics of Law...*, p. 73.

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Summary

Aleksandra Guss

Cultural heritage law as one of three dimensions of the aesthetics of law

The aesthetics of law covers the relations that exist between what is broadly understood as law and what is broadly understood as art. The latter is the source of aesthetic values and corresponding aesthetic experiences. Kamil Zeidler divides the aesthetics of law into three dimensions: external, internal, and what he calls "law as a tool of aesthetization". The third dimension includes norms that affect the aesthetization of everyday life. The aim of this article is to present how cultural heritage law and its principles and standards contained in Polish legal acts can be perceived as a "tool of aestheticization".

Keywords: aesthetics of law, cultural heritage, cultural heritage law, philosophy of law, protection of cultural heritage

Streszczenie

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Prawo ochrony dziedzictwa kultury jako jeden z trzech wymiarów estetyki prawa

Estetyka prawa obejmuje relacje, jakie występują między szeroko rozumianym prawem a szeroko rozumianą sztuką. Ta ostatnia jest źródłem wartości estetycznych i odpowiadających im przeżyć estetycznych. Kamil Zeidler dzieli estetykę prawa na trzy ujęcia: zewnętrzne, wewnętrzne oraz to, co nazywa „prawem jako narzędziem estetyzacji”. Trzeci wymiar to normy, które wpływają na estetyzację codziennego życia. Celem artykułu jest przedstawienie, w jaki sposób prawo ochrony dziedzictwa kultury oraz jego zasady i standardy zawarte w polskich aktach prawnych mogą być postrzegane jako narzędzie estetyzacji.

Słowa kluczowe: estetyka prawa, dziedzictwo kultury, prawo dziedzictwa kultury, filozofia prawa, ochrona dziedzictwa kultury