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## Communist monuments: Cultural heritage or cultural nuisance?

### 1. Introduction

Monuments dedicated to heroes, commemorating victorious battles and glorifying warriors or gods have a rich history. They embody public memory, praise the power of the victorious and the glory and wealth of the communities that built them. Sometimes they are an expression of strength and values of those who govern the area, especially if they become an instrument of propaganda and domination. Some have survived for millennia in their unchanged form while others have disintegrated into dust. They were created in accordance with canons of art and technology of their times and therefore some of them were understood only by their contemporaries; today, for many people, reliefs, inscriptions or symbols from the past are merely decoration, and their meaning is only recognised by art historians or religious scholars.

Yesterday's heroes often do not deserve this name today. The political, social and political changes that took place in 1989 in the countries of the communist bloc in Europe and the regaining of independence by the countries under the USSR's rule resulted in the rejection of communist ideology, although not everywhere and not at once. The whirlwind of history has turned not only the states, but also the heroes standing on the pedestals. In many cases, the inhabitants spontaneously destroyed monuments for Dzerzhinsky, Lenin or other icons of communist power. Today, however, in many European cities, more than 30 years after the 1989 Autumn of Nations, communist monuments still glorify the former Soviet regime that some consider to be a form of occupation.

The issue of monuments that commemorate communist heroes is essentially the subject of political, sociological and historical discourse. For example, Dominika Czarnecka

presented the situation of monuments erected to memorialise the Red Army.<sup>1</sup> Mariusz Czepczyński has interpreted post-socialist icons in the cultural environment.<sup>2</sup> The individual memorials were also examined in the context of the “hero” put on the pedestal.<sup>3</sup> The questions raised in the studies also concern the artistic value of the objects, their spatial context as well as their current evaluation and identification. Jagoda Mytych analysed the discourse that took place around specific monuments in Warsaw, saddle between Gorce and Pieniny Mountains and Rzeszów.<sup>4</sup> Ewa Ochman posed the problem regarding contemporary identification of Soviet war memorials.<sup>5</sup> An important academic work edited by Marek Domański and Tomasz Ferenc outlines the phenomenon of war memorials in the historical, cultural, geographical and artistic contexts.<sup>6</sup>

Among these studies there are few legal analyses. More recent works include research on communist naming,<sup>7</sup> decommunisation activities in the jurisprudence of administrative courts,<sup>8</sup> changes in street names<sup>9</sup> and voivode’s supervision in the context of the Decommunisation Act.<sup>10</sup> They are the result of legislative work which introduced

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<sup>1</sup> D. Czarnecka, “Pomniki wdzięczności Armii Czerwonej w Polsce Ludowej i w III Rzeczypospolitej”, *Dzieje Najnowsze* 2013, no. 4, pp. 93–100.

<sup>2</sup> M. Czepczyński, “Interpreting Post-Socialist Icons: From Pride and Hate Towards Disappearance and/or Assimilation”, *Human Geographies* 2010, no. 4(1), pp. 67–78.

<sup>3</sup> K. Kącka, “Upamiętnianie jako zadanie i wyzwanie władz administracyjnych. Sprawa pomnika wdzięczności Armii Czerwonej w Toruniu” [in:] *Współczesne wyzwania administracji rządowej i samorządowej*, ed. D. Plecka, Toruń 2013, pp. 305–323; W.B. Łach, “Generał armii Iwan Czerniachowski – bohater czy zbrodniarz wojenny?”, *Acta Universitatis Lodzianensis. Folia Historica* 2019, no. 11(103), pp. 155–171; A. Sakson, “Konflikt o pomnik generała Armii Czerwonej Iwana Czerniachowskiego w Pieniężnie na Warmii, czyli spór o domenę symboliczną na pograniczu polsko-kaliningradzkim. Studium przypadku”, *Pogranicze. Studia Społeczne* 2016, no. 27(2), pp. 131–147.

<sup>4</sup> J. Mytych, “Pionki na biało-czerwonej szachownicy: polityczny i medialny dyskurs o pomnikach na przykładzie ‘Czterech śpiących’, ‘Organów’ Hasiora oraz rzeszowskiego Pomnika Walk Rewolucyjnych”, *Naukowy Przegląd Dziennikarski* 2018, no. 2, pp. 65–94.

<sup>5</sup> E. Ochman, “Soviet war memorials and the re-construction of national and local identities in post-communist Poland”, *Nationalities Papers* 2010, no. 38(4), pp. 509–530.

<sup>6</sup> *Pomniki wojenne. Formy Miejsca Pamięci*, eds. M. Domański, T. Ferenc, Łódź 2016.

<sup>7</sup> B. Kwiatkowski, “Regulacja ustawy o zakazie propagowania komunizmu lub innego ustroju totalitarnego na tle procesów zmian nazewnictwa ulic Krakowa”, *Kwartalnik Prawo – Społeczeństwo – Ekonomia* 2018, no. 2(1–2), pp. 191–201.

<sup>8</sup> T. Kulicki, “Ustawa dekomunizacyjna w orzecznictwie sądów administracyjnych (part 1)”, *Prawo i Praktyka Temidium*, March 2019, pp. 51–55; R. Krupa-Dąbrowska, “Pomnik na cześć Armii Czerwonej nie narusza przepisów – wyrok WSA”, *Rzeczpospolita*, 22 May 2019.

<sup>9</sup> K. Bandarzewski, “Nadawanie nazw ulicom a samodzielność samorządu gminnego (uwagi na tle regulacji tzw. ustawy dekomunizacyjnej)” [in:] *Konstytucyjne umocowanie samorządu terytorialnego*, eds. M. Stec, K. Małysa-Sulińska, Warszawa 2018, pp. 311–336.

<sup>10</sup> K. Szlachetko, “Instrumentalizacja nadzoru nad samorządem terytorialnym na przykładzie regulacji zarządzenia zastępczego wojewody w sprawach związanych z dekomunizacją przestrzeni publicznej”, *Samorząd Terytorialny* 2018, no. 6, pp. 48–60.

the Act of 1 April 2016 on the prohibition to propagate communism or another totalitarian ideology in public space through proper names of organisations, public authorities, buildings, public facilities and monuments (consolidated text: *Journal of Laws* of 2018, item 1103), which is known as the Decommunisation law.

The law has provoked a lively discussion, which continues to this day, mainly in the daily press and social media.<sup>11</sup> There were conferences organised on specific objects, e.g. in Olsztyn<sup>12</sup> and Rzeszów.<sup>13</sup> As part of this discussion, it is necessary to consider the issue of judging actual and legal decommunisation actions in the context of the cultural heritage protection issue. It should be remembered that sometimes such unwanted monuments were designed or made by well-known artists, recognised and appreciated even today. The question arises, should we preserve or destroy this troublesome heritage? Is it necessary or useful to leave a monument be, but with some added footnote-type piece of information about cultural and historical context? Can we move it to a neutral place? It also raises another question: would it be enough?

In response to these questions, an interpretation of the applicable laws in Poland and an overview of the available doctrine and case law will be provided. The work will be supported by the views of the practitioners in the field of art history, cultural studies and other fields of science, who approach this issue with regard to the cultural policy of the countries.

## 2. Communist monuments

The countries of Central Europe were undoubtedly liberated from the Third Reich's grip with the help of the Red Army, only that one form of totalitarian control has been substituted with another, amounting to colonisation of many nations.<sup>14</sup> Ukraine, Belarus, Lithuania, Latvia, Estonia, Poland, Hungary, Czechoslovakia, Romania, Bulgaria and other European countries remained in the Soviet sphere of influence with the tacit consent of the Allied countries. The Soviet Union's position was the result of its military

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<sup>11</sup> "Pomniki, które depczą pamięć – Andrzej Paterek von Sperling o ustawie dekomunizacyjnej", *Rzeczpospolita*, 11 August 2018; W. Ferfecki, "W Polsce wciąż stoją komunistyczne pomniki. Nie wiadomo ile", *Rzeczpospolita*, 30 December 2019.

<sup>12</sup> <https://zabytki.olsztyn.eu/zabytki/aktualnosci/article/zachowac-zmienic-zburzyc-losy-pomnikow-w-czasach-przemian-konferencja-naukowa.html> (accessed: 12.10.2020).

<sup>13</sup> [https://rzeszow.wyborcza.pl/rzeszow/1,34962,17838160,Cala\\_sesja\\_o\\_pomniku\\_\\_W\\_czwartek\\_na\\_Uniwersytecie.html](https://rzeszow.wyborcza.pl/rzeszow/1,34962,17838160,Cala_sesja_o_pomniku__W_czwartek_na_Uniwersytecie.html) (accessed: 12.11.2020).

<sup>14</sup> J. Fedor, S. Lewis, T. Zhurzhenko, "Introduction: War and Memory in Russia, Ukraine, and Belarus" [in:] *War and Memory in Russia, Ukraine and Belarus*, eds. J. Fedor, M. Kangaspuro, J. Lassila, T. Zhurzhenko, Palgrave Macmillan, Cham 2017.

strength, its aggressive politics and the weakness of the West. The domination lasted for years, until 1989, when the economic situation enabled many countries to free themselves from dependence and regain full sovereignty. However, for several decades the Red Army was glorified as a liberator. Thus, monuments were erected to commemorate them, and no visible difference was being made between common Soviet soldiers and active installers of the new regime who are regarded today as criminals. There was only one trend – the liberators should be given monuments, and these included symbols such as red star, PPSH,<sup>15</sup> T-34 tank or divisional gun ZIS. By design of the communist authorities, these symbols were meant to convey Soviet patriotism built around the warrior-liberator myth (*voin-osvoboditel*)<sup>16</sup> and, at the same time, to deny the crimes committed on the liberated lands. In parallel, monuments were erected to Lenin, Stalin, Dzerzhinsky, Marx, Engels and local communist leaders. Even the obelisks dedicated to local heroes included references to friendship with the Red Army or communist symbolism, whether or not such connections were historically accurate.

The entire scheme of erecting monuments of this sort was about propaganda – visual omnipresence of the communist idea required them to be placed in central squares or at the intersection of main streets. The design of obelisks or monuments was commissioned to contemporary artists, among which we find recognised names such as Xawery Dunikowski (“Silesian Insurgents Monument” at Saint Anna’s Mountain (Góra Św. Anny) and “Monument of Gratitude to the Red Army” in Olsztyn), Władysław Hasiór (“The Organ” in the Pienin Mountains was originally a monument “In Memory of the Fallen in the Struggle to Consolidate the People’s Power”) and Alina Szapocznikow (her sculpture “Friendship”<sup>17</sup> was originally placed in the main hall the Palace of Culture and Science in Warsaw<sup>18</sup>). Despite prominent names of some of the designers, many of these fixtures presented little or no artistic value.

The changes initiated in Poland in the autumn of 1989 resulted in destroying monuments erected to the past authorities; one notable example was dismantling the Dzerzhinsky monument in Warsaw by the Public Road Administration to the applause of the gathered people in November 1989. Some monuments were destroyed completely,

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<sup>15</sup> PPSH-41 (*pistolet pulemyot Shpagina*), or Shpagin’s machine pistol, was a standard issue weapon of a Soviet soldier during the World War II; the iconic shape of the gun became synonymous with the popular image of Red Army.

<sup>16</sup> K. Bruggemann, A. Kasekamp, “The Politics of History and the “War of Monuments” in Estonia”, *Nationalities Papers* 2008, no. 36(3), pp. 425–448.

<sup>17</sup> The sculpture was sold at auction in 2019 for 1.7 million PLN – ca. 450.000 USD, <https://desa.pl/pl/wyniki/rzezba-i-formy-przestrzenne-m1j9/przyjazn-1954-r/> (accessed: 27.11.2020).

<sup>18</sup> “Między ideologią, Putinem i sztuką wysoką, Wywiad z W. Baraniewskim”, *Rzeczpospolita*, 29 December 2019.

some were given additional inscriptions, others were remodelled by cutting out red stars and other communist symbols. Simultaneously, some of the monuments, after being removed from their original location, were stored in various places managed by public or private authorities. The most famous are Memento Park in Budapest, the Socialist-Realist Art Gallery in Kozłówka and Grutor Park in Lithuania – each of these created with a different concept in mind. Decommunisation also meant that a large proportion of communist labels and proper names disappeared relatively quickly from the streets of towns and cities, not only physically (by the removal or physical destruction of the plaque) but also by way of official action.

At present, there are several dozen or perhaps several hundred objects remaining in public space in Poland that raise objections. Some of them are not properly maintained and fall into disrepair, others are renovated and some are even exposed and accentuated (for example by additional lighting). Some are given new meaning by renaming, removing communist symbolism or adding new, non-original elements. There is no doubt these monuments are testimony to a bygone era, but are they also cultural heritage?

### 3. Cultural heritage

Cultural heritage is often associated with prominence – it is made up of large buildings, castles or temples, easily recognisable man-made structures and works. We appreciate what is monumental, but the monumental is ultimately about remembrance. Memory, on the other hand, is often local, and the significance of an object may also be local. These differences in terms of value, locality or universality, artistry or lack of it, monumentality or micro-scale make it difficult to determine unequivocally and objectively what heritage is in terms of culture. To quote Craig Forrest, “all that we are is an expression of the culture that we inherited, and which we may manipulate and pass on to future generations”.<sup>19</sup>

However, this approach is as broad as the very term “culture” and as diverse as the values we wish to convey to our heirs. For legal purposes, however, a definition should be concise, unambiguous and substantive, and must allow assessment as to the scope and content of cultural heritage. It is worth to invoke in this context various definitions adopted in international instruments, such as the Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention, signed in Hague on 15 May 1954 (hereinafter: the

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<sup>19</sup> C.J.S. Forrest, “Defining ‘Underwater Cultural Heritage’”, *International Journal of Nautical Archaeology* 2002, no. 31(1), pp. 3–11.

1954 Hague Convention) or the Convention Concerning the Protection of the World Cultural and Natural Heritage adopted in Paris on 16 November 1972 (hereinafter: the 1972 UNESCO Convention). The Hague Convention defines cultural goods in Article 1(a): “movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above”. The 1972 UNESCO Convention in its Article 1 defines “cultural heritage” 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; sites: works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view”.

These definitions are largely descriptive: they list examples of sites that can be considered as part of the heritage. They also include an axiological element, by indicating an exceptional universal value as a qualifier of this heritage. Similarly, the term “of great importance for the cultural heritage of a nation” denotes value. Great importance refers to significance for the nation and not to commercial value.<sup>20</sup> This approach allows the state authorities to identify the goods that are important for a certain nation.<sup>21</sup> The exception clause, even in general terms, is also about value. Of course, it can be assumed that the concepts of “universality” and “exceptionality” are mutually exclusive,<sup>22</sup> but it can also be assumed that the context of uniqueness must be deciphered from a standpoint of a larger community. In other words, something may have value for the world’s heritage while being undermined and disputed locally.

At the same time, it should be remembered that cultural heritage is a living phenomenon: on one hand there is development of historical, archaeological and anthropological research and, on the other, there are changes in public attitude and memory due to political, social and cultural factors. A nation is constantly being created and updated

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<sup>20</sup> Ibid.

<sup>21</sup> H. Schreiber, “Komentarz do art. 1” [in:] *Konwencje UNESCO w dziedzinie kultury. Komentarz*, ed. K. Zalasńska, Warszawa 2014, p. 38.

<sup>22</sup> K. Piotrowska-Nosek, “Komentarz do art. 1” [in:] *Konwencje UNESCO...*, pp. 243–244.

through education and the cultivation of memories, so its heritage is also a reflection of memory and knowledge. Assuming after Janet Blake that the identification of cultural heritage is based on an active choice as to which elements of this wider “culture” are considered worthy of preservation as “heritage” for the future,<sup>23</sup> the notion of heritage as a self-updating aggregation of objects and ideas becomes substantial.

Cultural heritage items have patrimonial function as long as they contain four elements: authenticity, antiquity, meaning and beauty.<sup>24</sup> The absence of any of these allows the heritage to be rejected. There are however dark and lamentable aspects of our collective experience that, from objective standpoint, need remembering, but without raising them onto pedestal or treating as heritage. Genocide, war, slavery and the totalitarian regimes are undoubtedly such products of past generations. They are like an unwanted inheritance that can and sometimes must be rejected: we want to cast out of memory the shameful testator and everything he did, not only because of shame, but also to respect the victims of murders and martyrdom. The decision on what is to be expelled from the collective memory is a political decision that corresponds to the current social mood. The decision is taken by the state authorities – sometimes by international bodies – recognising what is and what is not worthy of protection and preservation for generations to come.<sup>25</sup> It should be noted, however, that the denial or omission of a heritage element affects the future identification of a nation or ethnic group. At the same time, there is a risk that the choice made for current political purposes in the future will not allow new generations to recognise the early symptoms leading to totalitarianism, war and crime. The important aspects must therefore be preserved, both momentous and glorious, as well as embarrassing and reprehensible, but it should be done in a proper form and with a proper moral evaluation dictated by historical knowledge.

#### 4. Totalitarian ideology in public space

The attempt to push out the memories of our history is multidimensional. One of them is the political context that affects the content of legislation. In 2016, the Polish Parliament adopted the Decommunisation law. The explanatory memorandum to the Senate draft stated that law cannot allow the promotion of communist symbols and other

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<sup>23</sup> J. Blake, “On Defining the Cultural Heritage”, *International and Comparative Law Quarterly* 2000, no. 49, pp. 61–85.

<sup>24</sup> N. Heinich, “The making of cultural heritage”, *Nordic Journal of Aesthetics* 2010–2011, no. 22(40–41), pp. 119–128.

<sup>25</sup> J. Blake, “On Defining the Cultural Heritage...”, pp. 61–85.

totalitarian regimes because such actions would demoralise society.<sup>26</sup> At the same time, the Senate draft made reference to Article 13 of the Constitution of the Republic of Poland of 2 April 1997 (*Journal of Laws* of 1997, no. 78, item 483, as amended; hereinafter: the Polish Constitution) which prohibits the existence of totalitarian and authoritarian organisations. The essence of the act is to restrict local governments in naming of buildings, facilities and public utilities which would commemorate persons, organisations, events or dates symbolising communism or another totalitarian system. There has also been public approval for the removal of monuments glorifying the Red Army and the shortening of the deadline for removing banned names. At the same time, Article 1(2) of the Decommunisation law extends the prohibition to monuments referring to individuals, organisations, dates and events symbolising the repressive, authoritarian and non-sovereign system of power in Poland in 1944–1989.

As far as monuments are concerned, Article 5a(1) of the Decommunisation law stipulates that they may not commemorate or otherwise promote individuals, organisations, events or dates symbolising communism or another totalitarian regime, and here the term “monuments”, according to Article 5a(2), expressly includes mounds, obelisks, columns, sculptures, statues, busts, commemorative stones, slabs, plaques, inscriptions and signs. It should be noted, however, that the meaning of the term “monument” for the purposes of this Act differs from the definition of a “monument” set forth in the Act of 23 July 2003 on the protection and preservation of monuments (consolidated text: *Journal of Laws* of 2020, item 282, as amended) or the Act of 7 July 1994 – Construction Law (consolidated text: *Journal of Laws* of 2020, item 1333, as amended). Systemic interpretation would be misleading. The 2016 law appears to operate within narrower understanding of the word, where a “monument” is not a “relict”, but a “memorial stone”, a structure purposefully erected in order to remember a person, an event or an idea. Therefore, a linguistic definition should be adopted, according to which a “monument” is “a sculptural or architectural-sculptural work in the form of a statue, obelisk, slab, building, etc., erected in honour of a person, to commemorate”.<sup>27</sup>

It must be noted that this textual approach, supported by teleological considerations, leads to a conclusion that the prohibition on promoting Communism is not absolute, because monuments not exposed to the public at all, or located in cemeteries or other places of final rest, exposed to the public as part of artistic, educational, collector’s, scientific or similar activities for purposes other than the promotion of a totalitarian system, and monuments inscribed in the register of monuments, either alone or as part of a greater whole – are not to be removed.

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<sup>26</sup> Senate draft act on the prohibition to propagate communism or another totalitarian ideology in public space, Senate Draft No 302 of 19 February 2016.

<sup>27</sup> *Słownik języka polskiego*, vol. 2, *L–P*, eds. H. Szkiłdź, S. Bik, C. Szkiłdź, Warszawa 1994, p. 795.



Recognition of a monument as communist or totalitarian requires some attention as to what “to commemorate” or “to symbolise” actually mean. In linguistic interpretation, “to commemorate” means “to remember, to recall, to preserve, to record something for future generations,<sup>28</sup> while “to promote” means “to spread, to disseminate ideas, slogans, thoughts; to unite someone for an idea, action, etc.; to carry out propaganda”.<sup>29</sup> The verb “to symbolise” means “being a symbol” and “to represent, to express something with symbols”. A symbol, in turn, “is a conventional sign which performs a function as a substitute for a certain object (a concept, a state of affairs) and brings this object to mind (evoking the reactions associated with it)”.<sup>30</sup> It can therefore be assumed that a symbol must be obvious, widely recognisable and unequivocally interpreted. As the Supreme Administrative Court stressed, the indefinite term serves to leave a greater margin of appreciation, while at the same time it requires the demonstration that the conditions set out in Article 1 of the Act are met in a specific situation.<sup>31</sup> The Court expressed a similar opinion in another case (which, perhaps not incidentally, was also heard by the same panel), pointing out that “the name of a given street symbolises a totalitarian system, if its designation is unequivocally associated with a given system, it is universally recognisable and so distinct that its independent use allows for identification with a given ideology. Only then one can state that the name of such a street symbolises a totalitarian system”.<sup>32</sup>

A different interpretation of the term “to symbolise” – this time in the context of commemorating a certain historic figure – stresses that in “judging (...) symbolic character should take into account current awareness of the society itself (including the lack of negative connotations, unambiguous associations). As a rule, this is not a sufficient negative premise to conclude that a given name does not symbolise communism within the meaning of Article 1(1) of the Act [the Decommunisation law], or does not promote it within the meaning of Article 1(2) of the Act. (...) Symbolisation or propagation within the meaning of the discussed regulations should be understood in an objectified manner and should relate basically to a person’s biography, his or her achievements, merits and other circumstances which justified naming a building or a public facility or device after him or her”.<sup>33</sup>

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<sup>28</sup> *Słownik języka polskiego*, vol. 3, R–Z, eds. H. Szkiłdź, S. Bik, C. Szkiłdź, Warszawa 1994, p. 607.

<sup>29</sup> *Słownik języka polskiego*, vol. 2, L–M, p. 937.

<sup>30</sup> *Słownik języka polskiego*, vol. 3, R–Z, p. 381.

<sup>31</sup> Judgment of the Supreme Administrative Court of 3 April 2019, II OSK 3079/18.

<sup>32</sup> Judgment of the Supreme Administrative Court of 20 March 2019, II OSK 3391/18.

<sup>33</sup> Judgment of the Supreme Administrative Court of 11 June 2019, II OSK 1200/19, LEX no. 2753956

It seems that the objective approach as accentuated in the latter judgment is most appropriate. The assessment of a figure, an event, an organisation honoured with a monument should be made as objectively as possible, free from emotion and in line with current historical knowledge.

The historical narrative imposed in 1944–1989 included figures who were unambiguous communist symbols (such as Lenin and Dzerzhinsky) and some lesser known persons or organisations supporting the introduction of a non-sovereign system of power in Poland. The degree to which a figure is publicly recognisable is not, however, an adequate criterion. Public perception is ambiguous, subjective and ephemeral, and decisions on the presence of symbols in the public space must be grounded in facts. Also, the permanent growth in the urban fabric and changes in the urban topography is not a sufficient argument in favour of protecting such an object. Complementing or even replacing communist symbolism with educational elements will make it possible to neutralise the intended propaganda effect. Unfortunately, half-measures sometimes are not enough.

Whether a given monument fits the legal categorisation as promoting or commemorating communist figures, organisations, events or symbols is almost entirely determined by a specific piece of evidence – an opinion of the Institute of National Remembrance – the Commission for the Prosecution of Crimes against the Polish Nation. This body is responsible for assessing whether the prerequisites for a communist monument are met. The removal is an administrative act of the voivode who decides primarily on the basis of this opinion. Despite being dominant piece of evidence, the opinion does not enjoy a legally privileged status and it is supposed to be evaluated in the light of the provisions of administrative proceedings, which means – on equal footing with other pieces of evidence. This position was confirmed *inter alia* by the judgment of the Regional Administrative Court in Warsaw in 2020, in which the Court stated that “the opinion of the Institute cannot be the sole and decisive proof of the removal of the monument in this case. The examination of evidence shall permit any document or other medium of information to be admitted as evidence to establish the facts of the case correctly. The obligation to consider all evidence is closely linked to the established principle of free evaluation of evidence”<sup>34</sup>

Procedural issues notwithstanding, it seems appropriate to pass the substantive assessment on to a specialised body. If it is the will of the state, as part of its cultural policy, to eliminate communist and other totalitarian symbols from public space, then this requires a substantive assessment. If such an entity already exists, it would amount to

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<sup>34</sup> Judgment of the Regional Administrative Court in Warsaw of 22 January 2020, VII SA/Wa 1677/19.

mismanagement to have the administrative body of the first instance each time seek the opinion of an outside expert, within the framework of evidentiary proceedings based on the Code of Administrative Procedure. However, the omission of the social factor is doubtful. The procedure should not be about participation of interested veteran or political-historical organisations, but rather an actual determination of the reception of the monument by the local community. It is not a matter of assessing political emotions, but of determining whether the current positive social assessment is maintained after confronting the facts of life those who were brought up on the pedestals, such as the betrayal of the Second Polish Republic, crimes committed by Communists, participation in the apparatus of totalitarian terror, etc. It is necessary to balance and assess precisely to what extent the monument is an expression of communist propaganda and to what extent leaving it would be mere whitewashing of the communist regime.

## 5. Right to an unwanted heritage

It is the people that decide what they want to keep in their memories. The cultural heritage is not permanent, it is constantly changing and evolving. For a long time now, the removal of swastikas and monuments dedicated to the Third Reich as part of the denazification campaign has been uncontroversial. This process is not entirely finished, either, and the challenges posed by the current use of buildings of Nazi origin in Germany are still very much alive.<sup>35</sup> The question may arise as to whether the symbols of communist terror are to remain on the pedestal? The answer is clear to everyone. At the same time, while the assessment of the Third Reich is unequivocally negative, the assessment of the achievements of the Red Army, its mythologisation and the fact that the central point of Russian national identification is based on the Great Patriotic War, is unresolved. For the Russians, for those who fought in the Red Army, its image is that of a liberator and its deeds were heroic. For many, however, it is a symbol of individual and society-wide suffering that has remained for years in the countries of Central and Eastern Europe subjected to the Soviet Union. Those who lost their lives in the fight against German totalitarianism cannot be brushed off and trampled underfoot, which is why respect for the graves of Red Army soldiers and saving monuments in cemeteries dedicated to the fighters is most commendable. At the same time, there is no acquiescence or praise to communist criminals, to communist secret police, to communism and its icons with all its false propaganda. Leaving monuments of gratitude to the Red Army or glorifying

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<sup>35</sup> S. Macdonald, *Difficult heritage. Negotiating the Nazi Past in Nuremberg and Beyond*, Routledge, London – New York 2009.

Dzerzhinsky should be treated as if they were unexploded bombs and mines left behind. These objects can potentially be used by social, cultural and political forces both to build and to destroy.<sup>36</sup> The context of an obelisk for the Red Army's fallen located in a war cemetery is different from the reception of a fixture located in a dominant square in the city centre. The removal of monuments to slave traders in the United States or Great Britain – even if they are famous for their victorious battles – is an expression of identification of society and of the nation. In the same way, removing communist remainders from the streets is a remembrance and respect for the victims of totalitarian terror. This removal makes it possible to eliminate the dissonance of unwanted cultural heritage and respect the memory of the victims. When one looks at communist monuments, one can also look at the four values defining cultural heritage: authenticity, antiquity, meaning and beauty. The negative opinion of historians undoubtedly results in the absence of the element of authenticity, and is even an example of falsification. The condition of antiquity, especially in the case of buildings erected in the era of socialist realism, remains fulfilled, even if one can have significant doubts about monuments from the late 1970s and 1980s. Beauty is probably rare in the case of these propaganda works. Also today's insignificance speaks in favour of transferring communist heroes to the museum and putting them in the right context within a closed exhibition space.

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<sup>36</sup> J.E. Tunbridge, G.J. Ahworth, *Dissonant heritage – The management of the past as a resource in conflict*, Chichester, England 1996, p. 32.

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## Summary

### **Communist monuments: Cultural heritage or cultural nuisance?**

Monuments to Lenin, Dzerzhinsky and the Red Army stand in many places in Europe. They are being spontaneously destroyed, removed from city squares and streets or moved to neutral places. Sometimes artistic value has saved them from destruction. Poland has introduced legal regulations to remove communist and other totalitarian symbols from public space. These regulations arouse much emotion in society. The article is an attempt to answer the question whether nations have the right to remove unwanted and troublesome heritage. The current historical, political and cultural context of monuments glorifying communism does not allow them to remain in their original location. Sometimes communist monuments should be permanently removed from public space and thus erased from public awareness.

**Keywords:** cultural heritage, decommunisation, communist monuments, public space

**Streszczenie****Komunistyczne pomniki: dziedzictwo kultury czy kulturowa uciążliwość?**

Pomniki Lenina, Dzierżyńskiego czy też te gloryfikujące Armię Czerwoną stoją w wielu miejscowościach w Europie. Są spontanicznie niszczone i usuwane z placów i ulic, przenoszone w neutralne miejsca. Zdarza się, że mają wartość artystyczną ratującą je przed zniszczeniem. Polska wprowadziła regulacje prawne nakazujące usunięcie symboli komunistycznych i wszelkich innych totalitarnych z przestrzeni publicznej. Przepisy te budzą dużo emocji w społeczeństwie. Artykuł jest próbą odpowiedzi na pytanie, czy narody mają prawo do usunięcia niechcianego i kłopotliwego dziedzictwa. Aktualny kontekst historyczny, polityczny i kulturowy pomników gloryfikujących komunizm nie pozwala na pozostawienie ich w pierwotnej lokalizacji. Czasem pomnik należy trwale usunąć z przestrzeni publicznej, a tym samym ze świadomości społecznej.

**Słowa kluczowe:** dziedzictwo kultury, dekomunizacja, pomniki komunistyczne, przestrzeń publiczna