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Review of the key legal acts concerning the protection of historical monuments in Poland from 1918 onwards

1. Introduction

In this article I would like to discuss the development of legal acts concerning historical monument protection in Poland. The presented issue is particularly important, especially when it comes to historical monuments of Poland, since they were exposed to harm. All the events taking place in this country, from the Partitions to the communist regime, had a significant impact on the condition of Polish cultural assets. Presenting these issues in the form of a cross-section of various normative acts issued at the turn of the years will help to better understand and provide a broader view of the current legislation on the protection of monuments. I will consider the most important normative acts on the grounds of the discussed branch of law. These shall be: the Decree of the Regency Council of 31 October 1918 on the care of cultural and artistic monuments (*Journal of Laws* of 1918 no. 16, item 36), the Legislative decree of the President of the Republic of Poland of 6 March 1928 on the care of monuments (*Journal of Laws* of 1928, no. 29, item 265, as amended), the Decree of 1 March 1946 on the registration and prohibition of export of works of art and objects of artistic, historical or cultural value (*Journal of Laws* of 1946, no. 14, item 99), the Act of 15 February 1962 on the protection of cultural assets and museums (*Journal of Laws* of 1962, no. 10, item 48, as amended) and the Act of 23 July 2003 on the protection and preservation of monuments (consolidated text: *Journal of Laws* of 2020, item 282, as amended), currently in force.

2. Definitions of cultural heritage and historical monument

In order to start reflection on different legal acts concerning historical monuments protection it is particularly important to explain what a monument is and place it in the context of a more general concept, namely – cultural heritage.

Cultural heritage can be defined as a collection of movable and immovable objects with related spiritual values as well as historical and cultural occurrences, etc. which are important in particular society and as such require legal protection.¹ Cultural heritage includes both material and non-material goods, in the form of concepts, feelings, reactions passed on by predecessors to future generations.²

Furthermore, we can distinguish three aspects of cultural heritage. First of all, there is national cultural heritage, and for the purposes of this article we are talking about Polish national heritage. Secondly, we differentiate the European cultural heritage, and thirdly, the world cultural heritage, with each previous one including the next.³ Each of the aforementioned areas is subject to legal protection in a slightly different way. When speaking about the Polish national heritage, it is primarily the Polish legislation, and when it comes to the next two, it is European legislation and international law, respectively.

Given this definition of cultural heritage, its importance for society is self-evident. Cultural heritage is what constitutes the identity of a particular society. It reveals its traditions and customs as well as indicates its development. It can be said that cultural heritage is the essence of a society, thus it determines the values on which that society is driven and on which it was created. Therefore, it is necessary for it to be protected by law.

When it comes to historical monument its dictionary definition is “an object or item of particular value because of its age or aesthetic features”.⁴ The concept of a monument is also defined in most legal systems in a separate, specific way. Polish law also defines this notion, beginning with the Decree of 1918 and including the current Act on protection and preservation of monuments of 2003.

Monuments form an important part of the above mentioned group of objects called cultural heritage. As testimonies of times that have passed, they provide us with a great amount of information concerning the lives of our ancestors, thus they play an extremely important role as sources of knowledge, as well as indicating the traditions

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

² K. Zeidler, “Pojęcie ‘dziedzictwa narodowego’ w Konstytucji RP i jego prawna ochrona” [in:] K. Zeidler, *Zabytki. Prawo i praktyka*, Gdańsk – Warszawa 2017, p. 18.

³ *Ibid.*, p. 18.

⁴ Definition from Dictionary of Polish Language (SJP) <https://sjp.pl/zabytek> (accessed: 10.10.2020).

and values of particular societies. Therefore, as in the case of cultural heritage, the legal protection of the monuments, as its part, is extremely important and worth paying attention to.

3. The Decree of the Regency Council of 1918 on the care of cultural and artistic monuments

The year 1918 marks the beginnings of the monument protection law in Poland. On 31 October 1918 the Regency Council of the Kingdom of Poland issued a Decree on the care of cultural and artistic monuments (hereinafter: the Decree of 1918). It therefore plays an extremely important role in the development of monument protection law in Poland, since it basically originated the entire branch of law and will be described as such in this article.

Leaning closer to the date of the decree we can notice that it was issued even before the date now commonly regarded as the date of Poland's regaining independence. The question that arises is why the need to protect national monuments was born even before the independence was regained. The answer to this question is simple: the Polish cultural heritage was destroyed during the years of the Partitions and the First World War, therefore it required immediate protection. National legacy also played an important role as a factor keeping Poles in the belief that their country will be reborn again.⁵ Consequently the need for protecting cultural heritage in Poland was necessitous at that time.

Moreover, it is worth noting that Poland, which was forming its statehood at that time, had to face cultural, national, religious, linguistic and also legal divisions. It was the different legal systems in the individual partitions that made the introduction of uniform legislative solutions on the merged territories of the reborn Poland one of the most urgent issues.⁶

The Decree, apart from being the first act of this kind in the history of Poland, is remarkable for being an illustration of exceptionally high quality legislation. As an example of a modern and forward-looking solution in it, we can point out the ban on exporting historical objects abroad without the conservator's permission on the account of the "national cultural good". The restriction of the owner's property rights for the national interest is in itself a progressive regulation, as is the possibility to initiate *ex officio* expropriation proceedings for a public museum.⁷

⁵ *Dekret Rady Regencyjnej z 1918 r. o opiece nad zabytkami sztuki i kultury z komentarzem czyli eseje o prawie ochrony dziedzictwa kultury*, eds. K. Zeidler, M. Marcinkowska, Gdańsk 2017, pp. 8–9.

⁶ K. Zalańska, *Prawna ochrona zabytków nieruchomych w Polsce*, Warszawa 2010, p. 28.

⁷ J. Pruszyński, "Organizacja ochrony zabytków w dwudziestoleciu międzywojennym", *Ochrona Zabytków* 1988, no. 1/2(161), p. 76.

As far as the scope of regulation is concerned, the decree used the enumeration method. The monuments were divided into three groups: 1) immovable (Article 12), e.g., caves, fortified settlements, buildings, both brick and wooden, monuments, grave-stones; 2) movable (Article 18), e.g., works of art, paintings, sculptures, coins, medals, armour; 3) excavations and finds (Article 23).

The Decree also extended legal protection to landscapes and this was the first such regulation in Polish law.⁸

In accordance with Article 1 of the Decree, legal protection was granted to monuments located within the borders of the Republic of Poland, provided that they were inscribed in the register of art and cultural monuments (the register was established by this Decree). However, it follows from the subsequent regulations that items not entered into the register were also subject to protection of the Decree – under certain conditions. The Decree differentiated the legal protection of immovable, movable and archaeological monuments, which is a result of their different properties.⁹ According to Article 2 of the Decree, the care of the monuments belonged to the Ministry of Religious Denominations and Public Enlightenment (it can be said that it is the equivalent of today's Ministry of Culture and National Heritage).¹⁰

As far as the technical side of monument protection is concerned, the Decree created an administrative structure for the protection of monuments, which can be called conservation services. These services were related to the idea of conservation districts and conservators linked to voivodes, as specialised organs of the executive branch of government, while being severed from “ordinary” local government. This is most probably due to the fact that, referring to the political thought of that time, the protection of historic monuments should be the responsibility of the state as a whole and not of the self-governmental, regional structures.¹¹ According to Article 3 of the Decree, the activities related to the care of monuments of art and culture were the responsibility of the conservators of monuments of art and culture, appointed by the Minister of Religious Denominations and Public Enlightenment.¹²

As I mentioned earlier, the creation of such legislation was necessary for the reborn Poland. The need to protect historical monuments resulted not only from the need to

⁸ Ibid., p. 77.

⁹ *Dekret Rady Regencyjnej z 1918 r. ...*, pp. 15–16.

¹⁰ Ibid., p. 20.

¹¹ P. Dobosz, “Perspektywy prawa i organizacji administracji konserwatorskiej w 100-lecie powstania niepodległych służb ochrony zabytków w Polsce”, *Wiadomości Konserwatorskie* 2018, no. 56, p. 53.

¹² P. Szymaniec, “Polska myśl konserwatorska przełomu XIX i XX w. a rozwiązania Dekretu Rady Regencyjnej z dnia 31 października 1918 r. o opiece nad zabytkami sztuki i kultury” [in:] *Ochrona dóbr kultury w rozwoju historycznym*, ed. M. Różański, Olsztyn 2017, p. 43.

manifest one's Polishness, but also from the considerable damage done to the Polish cultural heritage by the partitioners. This situation was further aggravated by the lack of unified legal regulations in the areas previously governed by partitioning powers. The Decree of 1918, as a normative act, met those needs by introducing modern methods of monument preservation into Polish legal system.

Unfortunately, the damage caused by many years of warfare in Poland, as well as the disproportion of necessities and resources, were the reason why many of the intended objectives related to the protection of cultural heritage, introduced by the Decree, were not achieved.¹³ That is why the need for changes arose. The respond to that need came in 1928.

4. The Legislative decree of the President of the Republic of Poland of 6 March 1928 on the care of monuments

The second decade of the twentieth century in the Republic of Poland began with legislative work. It became clear that the previous regulations did not consider all the issues related to the organisation and operation of monuments conservationists.¹⁴ The works ended with the issue of the Legislative decree of the President of the Republic of Poland of 6 March 1928 on the care of monuments (hereinafter: the Legislative Decree). It is worth pointing out that the invoked regulation constitutes the first source of universally binding law in the field of protection, care and conservation of historical monuments, which was established by the constitutional authorities of a fully independent and internationally recognised Poland.¹⁵

In terms of the subject matter, the Legislative Decree did not differ significantly from the Decree of 1918. However, the definition of monument was modified. From that moment on, every object (both immovable and movable), characteristic of a certain epoch, having artistic, cultural, historical, archaeological or paleontological value, became a monument. This value had to be established by administrative action. Any object having these three features – representativeness, value and official recognition – was to be preserved.¹⁶

The Legislative Decree, in addition to defining a historic monument, contained several other regulations different from those in the aforementioned Decree of 1918. For example, the register was abandoned as a basis for taking a monument under state protection, and it was replaced by an administrative decision of a competent authority

¹³ J. Pruszyński, "Organizacja ochrony zabytków...", p. 78.

¹⁴ Ibid., p. 79.

¹⁵ P. Dobosz, "Perspektywy prawa...", p. 56.

¹⁶ J. Pruszyński, "Organizacja ochrony zabytków...", p. 79.

declaring the object to be a monument. The time criterion for recognising an object as a monument was also discarded, which was a very progressive thought at that time.¹⁷

In Article 2 of the Legislative Decree, there is an enumerative list of objects, which in particular are monuments. Among them we can point out as examples caves and tombs with antechamber, traces of land and surface sediments, pottery and metal smelting furnaces, prehistoric stone figures, both wooden and brick buildings with all the details of architecture and wall decoration and the surroundings, loose monuments, tombstones, ruins of buildings, monuments and statues, ornamental gardens, works of art: paintings, sculptures, engravings, coins, medals. From the further part of Article 2 we learn that the Legislative Decree excludes documents which are secret under canonical law, as well as objects of special religious cult, such as miraculous paintings – their protection was considered sufficient.¹⁸

According to Article 5 of the regulation, the monuments shall be looked after by the conservation authorities. The article contains further clarification, according to which the conservation authority in the first instance is the provincial general administration, while the conservation authority in the second instance is the Minister of Religious Denominations and Public Enlightenment. The Decree has placed a significant amount of duties on conservation services, a burden which unfortunately proved excessive. Conservation services were not fully operational at the time. As in the case of the first Decree, the Legislative Decree has not achieved its intended purpose: the inadequacies appeared due to excessive duties, insufficient resources and understaffing of conservation offices.¹⁹

5. The Decree of 1 March 1946 on the registration and prohibition of export of works of art and objects of artistic, historical or cultural value

Another element of the evolution of the Polish system of protection of cultural assets was the Decree of 1 March 1946 on the registration and prohibition of export of works of art and objects of artistic, historical or cultural value (hereinafter: the Decree of 1946). The decree of 1946 amended the 1928 Legislative Decree that had been in force so far.

¹⁷ K. Zimna-Kawecka, “Monument protection and organisation of conservation offices during the interwar period in Poland (on the example of Pomeranian Voivodeship) and the norms in the Act from 23 July 2003 concerning monument protection and care for monuments”, *Wiadomości Konserwatorskie* 2010, no. 27, p. 125.

¹⁸ J. Pruszyński, “Organizacja ochrony zabytków...”, p. 79.

¹⁹ *Ibid.*, p. 88.

The new regulation imposed an obligation to register a work of art or an object of artistic, historical or cultural value by anyone who was in possession of such an object. The application for registration had to take place within 3 months from the entry into force of the decree under penalty of fine and forfeiture of the object to the state. Both private persons and persons acting as intermediaries were obliged to register, while museums were excluded from the regulation (theoretically, the register of monuments should have been kept in them).

Owners, holders or managers of objects that were subject to registration were obliged to report the object to the local conservation authority of the first instance, which declared the registration or exemption from registering. In cases of doubt, these authorities were obliged to consult the National Museum in Warsaw, the National Museum in Cracow or the Wielkopolska Museum in Poznań, and in relation to prehistoric and early-historic monuments – the State Archaeological Museum in Warsaw, the Archaeological Museum of the Polish Academy of Arts and Sciences in Cracow or the Prehistoric Museum in Poznań.²⁰ The necessity of introducing such regulation is highly doubtful, since the previous provisions seemed to be sufficient – registration only with the consent of a private person, and obligatory only if the object threatened to be deteriorated.

The decree also introduced a ban on export of works of art and objects of artistic value outside the country without permission. It was specified that all dated movable works of art and objects made up to 1830 of artistic or historical value, as well as non-dated movable objects made from prehistoric times up to and including the period of the empire and objects of historical or cultural value related to national uprisings or post-industrial emigration, are considered to be the items which are subject to the export ban. The permit could only be issued by the Minister of Culture and Art and its absence resulted in a fine, imprisonment of up to three years or obligatory forfeiture of property in accordance with the Regulation of the Minister of Culture and Art of 14 January 1947. It should be noted that the Decree of 1946 almost literally copied the solution of the Decree of 1918, which, however, was created under completely different political conditions.²¹

The registration requirement imposed by a decree of 1946 was an expression of the dominant tendency of the state to interfere in matters previously free of its interference. In addition, it was not calculated that the registration of all monuments located on Polish territory would significantly exceed the capabilities of the conservation service.

²⁰ K. Burski, “Normatywne podstawy ochrony dóbr kultury w PRL. Studium historyczno-prawne” [in:] *Prawo a ochrona dóbr kultury*, eds. P. Dobosz, M. Adamus, D. Sokołowska, Kraków 2014, p. 82.

²¹ J. Pruszyński, *Dziedzictwo kultury Polski. Jego straty i ochrona prawna*, vol. 2, Kraków 2001, p. 284.

Furthermore, the ban on the export of monuments was illusory in that the majority of citizens of the People's Republic of Poland were denied not only the opportunity to leave, but also any foreign contacts, while the export of works of art by government shareholders was not subject to any control.

The decree significantly violated property rights.²² The obligatory character of the registration, its complicated procedure and high criminal penalty threat caused the assumption that the state authorities are to confiscate monuments in private hands, and thus to hide and even destroy the objects of art, especially those made of precious materials. The effectiveness of the Decree of 1946 is also evidenced by the lack of any documents concerning registration and permits granted during its sixteen-year validity.²³

6. The Act of 15 February 1962 on the protection of cultural assets and museums

The Act of 15 February 1962 on the protection of cultural assets and museums (hereinafter: the Act of 1962) was the legal successor of the Decree of 1946. This regulation was also largely an echo of the communist power prevailing at that time in Poland. This was indicated by many expressions used in the law, such as “development of socialist society” or “manifestations of clericalism”. After the law was issued, it was called the most modern act of its kind in all Europe. It should be stated, after Jan Pruszyński, that this compliment was definitely exaggerated,²⁴ as it is difficult to point it out as an example of good legislation at all.

The Act of 1962 introduced a new notion of “cultural assets” – any movable or immovable object, old or contemporary, relevant to heritage and cultural development because of its historical, scientific or artistic value. This definition appears to be imprecise, giving rise to a rather discretionary granting of monument status to objects, which in turn may lead to a restriction of property rights. A legislative procedure of this kind corresponds to the communist socio-political doctrine of that time.

Furthermore, the Act of 1962 states that monuments should serve the “development of socialist society”. Any objects were excluded from legal protection as a cultural asset if they were considered as relics of “clericalism” or “nobility”, serving the “exploitation of man by man” or otherwise not conforming to the principles of socialist ideology.

²² A. Mazur, “Ograniczenia wywozu zabytków ruchomych w prawie polskim i czeskim”, *Zeszyty Naukowe Towarzystwa Doktorantów UJ. Nauki Społeczne* 2017, no. 17(2), p. 164.

²³ J. Pruszyński, *Dziedzictwo kultury Polski...*, p. 286.

²⁴ *Ibid.*, p. 293.

In spite of this, a significant part of such monuments were already registered and thus subject to legal protection.²⁵

The term “monument” was also introduced into the law, alternating with the term “cultural asset”, which caused conceptual confusion and indicated the lack of consistency of the lawmakers.²⁶ Following the example of its predecessors, the 1962 Act also contained an enumerative catalogue of objects subject to legal protection as historical monuments.²⁷ Article 5 of the Act indicated that from the subject matter point of view the objects to be protected were in particular:

- 1) works of construction, urban planning and architecture, regardless of their state of preservation, such as historical urban assumptions of cities and settlements, parks and decorative gardens, cemeteries, buildings and their interiors together with their surroundings and building complexes of architectural value, as well as buildings of importance for the history of construction;
- 2) ethnographic objects such as typical rural housing estates and particularly characteristic rural buildings as well as all devices, tools and objects that are the evidence of economy, artistic creation, ideas, customs and other fields of folk culture;
- 3) works of plastic arts – sculpture, painting, decoration, graphics and illumination, handicrafts, weapons, costumes, numismatics and sphragistics;
- 4) historical monuments, such as weaponry, battlefields, places commemorating the struggles for independence and social justice, extermination camps and other sites, buildings and objects related to important historical events or to the activities of institutions and prominent historical personalities;
- 5) archaeological and paleontological sites, such as field traces of primary settlement and human activity, caves, prehistoric mines, mounds, cemeteries, barrows and all the products of past cultures;
- 6) objects of technology and material culture, such as old mines, steelworks, workshops, buildings, constructions, devices, means of transport, machines, tools, scientific instruments and products which are particularly characteristic of ancient and modern forms of economy, technology and science, when they are unique or connected with important stages of technical progress;
- 7) rare specimens of living or inanimate nature, if they are not subject to nature conservation regulations;

²⁵ Ibid., p. 295.

²⁶ Ibid., p. 298.

²⁷ J. Artemiuk, “Geneza pojęcia zabytku archeologicznego w prawie polskim”, *Folia Iuridica Universitatis Wratislaviensis* 2015, vol. 4(2), p. 113.

- 8) library materials, such as manuscripts, autographs, illuminations, old prints, first editions, prints-unique and other cimelia, maps, plans, notes, engravings, other recordings of image or sound, instrumentaria, bindings;
- 9) collections which have artistic or historical value as a whole, regardless of the type and value of their components, if they are not part of the national archival resource as a whole, regardless of the type and value of the individual components, if they are not part of the national archival collection
- 10) studios and workshops of prominent artists and activists, as well as documents and objects related to their life and work;
- 11) other immovable and movable objects that deserve permanent preservation due to their scientific, artistic or cultural value;
- 12) cultural landscape in the form of established conservation protection zones, reserves and cultural parks.

The 1962 Act also introduced significant changes with regard to the export abroad of movable monuments. Article 41(1) of the Act introduced a general ban on the export of historical monuments. However, Article 42(1) listed the assets which were not subject to the export ban – they could be exported, but only after obtaining a certificate from the Voivodeship Historic Preservation Officer or the National Library in Warsaw. According to the regulation of the Minister of Culture and Art of 30 June 1965 on the procedure for submitting applications and issuing certificates and permits for the export of cultural assets abroad, the competent authorities for issuing permits were: the National Library in Warsaw, the Head Office of the State Archives and the conservator of monuments. An exception was the application for permanent export of a musical instrument of high artistic or historical value, which had to be submitted to the Minister of Culture and Art.²⁸

The Act of 1962 also stipulated the keeping of a register of monuments, however, as in the previous regulations of 1918 and 1928, the register was not complete or exhaustive and was only indicative. Cultural goods were not monuments until they were entered into the register. In the catalogue of goods which were subject to registration, we can find works of construction, urban planning and architecture, regardless of their state of preservation. Sacred objects were completely ignored in this catalogue, thus neglecting the specific nature of temples and the works of art contained therein. Potential protection could also be given to “battlefields, places commemorated by fights for independence and social justice, extermination camps and other sites and buildings connected with important historical events or with the activities of institutions and prominent historical personalities”. However, Polish authorities of that time did not recognise the wars of 1914–1918 as an independence struggle, and treated the war of 1920

²⁸ A. Mazur, “Ograniczenia wywozu zabytków...”, pp. 164–165.

as an aggression of Poland against the young Soviet republic. Therefore, the protection of the above mentioned objects in the Polish People's Republic was doubtful and, in fact, it was only real on paper.²⁹

We can summarise this law as too general and too imprecise, as well as hermetic. Following J. Pruszyński, one can say that the biggest accusation that can be made against this Act is its inconsistency with other branches of public law. Many monuments have been destroyed and neglected on its grounds, and its regulations have unfortunately shaped the attitude of the whole generation of conservators to the resource under its protection. It was a false and harmful approach in its effects.³⁰

7. The Act of 2003 on protection and preservation of monuments

The functioning of the 1962 law left a lot to be desired, so it became necessary to re-regulate the protection of cultural heritage law in a way that would correspond to the changing reality – primarily the political transformation that had taken place in Poland since 1989. As a result of the transformation, many normative acts required modernisation and adaptation to new conditions, including issues concerning legal protection of monuments. The answer to these problems was supposed to be the Act of 2003 on protection and preservation of monuments (hereinafter: the Act of 2003).

Article 1 of the Act of 2003 defines the subject matter of the law. According to this article, the Act regulates the subject, scope and forms of monuments care and protection as well as principles of creating a national program of monuments care and protection and financing conservation, restoration and construction works on monuments, as well as organisation of monument protection bodies. The article concretises the provisions of Articles 5, 6 and 73 of the Polish Constitution: the existence of an obligation on the part of the Polish nation (i.e. all citizens of the Republic of Poland) to pass on to future generations everything that is valuable from more than a thousand years of achievements is emphasised in the text of the Basic Law at the very outset – in the preamble.³¹

The current Act on the on the protection and preservation of monuments keeps the term “monument”. However, in addition to the classic division of monuments into movable and immovable, the Act distinguishes the category of archaeological monuments. Admittedly, the Act of 1962 also distinguished such a group of objects, but did not formulate any definition in this respect, only indicating them as examples. On the

²⁹ J. Pruszyński, *Dziedzictwo kultury Polski...*, p. 301.

³⁰ *Ibid.*, p. 306.

³¹ *Ustawa o ochronie zabytków i opiece nad zabytkami. Komentarz*, ed. M. Cherka, LEX.

other hand, the regulations concerning archaeological monuments contained in the Act on protection and preservation of monuments clearly refer to the provisions of the European Convention for the protection of archaeological heritage, drafted by the Council of Europe – the first convention regulating the issues related to legal protection of archaeological monuments, although the attempts to adopt an act in this respect were made already in the interwar period.³²

The new law on the protection of monuments already in its very name introduces the division of the whole sphere of protection into two areas: 1) protection of monuments and 2) their preservation. Protection of monuments is carried out by public authorities – governmental and self-governmental administration, acting in the public interest, according to the competences assigned to them by law. On the other hand, the preservation of monuments is individualised, and the responsibility for carrying it out is vested on the current owner of the monument.³³ The preservation of the monument by its owner or possessor consists of, in particular, ensuring the following conditions: scientific research and documentation of the monument; carrying out conservation, restoration and construction works on the monument; securing and maintaining the monument and its surroundings in the best possible condition; using the monument in a way that ensures permanent preservation of its value, as well as popularising and disseminating knowledge about the monument and its importance for history and culture.³⁴

The Act of 2003 specifies what the protection of monuments consists of, particularly with regard to taking actions by public authorities to ensure legal, organisational and financial conditions enabling permanent preservation of monuments as well as their development and maintenance, preventing threats that may cause damage to the value of monuments, stopping the destruction and misuse of monuments, counteracting theft, disappearance or illegal export of monuments abroad and controlling the state of preservation and destination of monuments, as well as taking into account protective tasks in spatial planning and development and in forming the environment.³⁵

The Act also typifies the following offences where the object of the criminal behaviour is a monument:

- 1) intentional and unintentional destruction or damage of a historical monument (Articles 108(1) and 180(2));

³² A. Gerecka-Żołyńska, “Realizacja międzynarodowych standardów ochrony dziedzictwa kulturalnego w polskiej ustawie o ochronie zabytków i opiece nad zabytkami”, *Ruch Prawniczy, Ekonomiczny i Socjologiczny* 2007, no. 4, p. 53.

³³ R. Golać, *Ustawa o ochronie zabytków i opiece nad zabytkami. Komentarz*, LEX.

³⁴ J. Sługocki, *Opieka nad zabytkiem nieruchomym. Problemy administracyjnoprawne*, Warszawa 2017.

³⁵ *Ibid.*

- 2) intentional and unintentional export of the monument without permission or failure to bring it back into the territory of the Republic of Poland after exporting it abroad within the period of validity of the permission or, in the case referred to in Article 56a(8) of the Act, within 60 days from the date when the decision on the refusal of issuing another permission to temporarily export the monument abroad has become final or from the date of receiving information that the application for issuing another permission to temporarily export the monument abroad has been left without consideration (Articles 109(1) and 109(2));
- 3) counterfeiting or altering of the historic monument in order to use it in trading in antiques (Article 109a);
- 4) selling a movable item as a movable monument or selling a monument as another monument, in a situation when the perpetrator knows that they are counterfeited or forged (Article 109b);
- 5) search, without permission or against the conditions specified in the permission, for hidden or abandoned antiques, including with the use of all kinds of electronic and technical devices and diving equipment (Article 109c).

The Act of 2003, like any other law, has its drawbacks and advantages. What it can be primarily accused of is the excessive workload on the conservation services. The 2003 law imposes so many obligations on provincial conservators that in the current legal framework they are not able to cope with it. It is also said that the act imposes more obligations than rights on private owners of historical monuments, thus constituting an excessive restriction of the right of ownership.³⁶ The undue burden raises questions as to the practicalities: as a matter of fact, most of the owners do not perform their duties under the Act, and thus reduce the number of duties of the conservation services. Consequently, the conservation services are able to cope with all their duties, however, this has not particularly beneficial consequences for the monuments.³⁷ In spite of numerous flaws and deficiencies, the 2003 law is currently in force and there is room for postulations *de lege ferenda* – changes that will allow for more complete protection of historical monuments.

It is worth emphasising that nowadays the Polish cultural heritage is also protected by other special laws, such as the Act of 3 February 2001 on the protection of Fryderyk Chopin's heritage (consolidated text: *Journal of Laws* of 2020, item 115). What is more, Poland is a party to international agreements concerning the protection of various types of cultural heritage, such as the Convention for the Protection of the

³⁶ K. Zeidler, "O dobre prawo dla zabytków – rozważania na gruncie ustawy z 2003 r. o ochronie zabytków i opiece nad zabytkami" [in:] K. Zeidler, *Zabytki. Prawo...*, p. 58.

³⁷ *Ibid.*, p. 59.

Architectural Heritage of Europe adopted on 3 October 1985 in Granada or 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.

8. Conclusions

The development of monument protection law in Poland has come a long way, beginning with the Decree of 1918 and ending within the Act of 2003. Polish monuments have been exposed to waves of destruction for years. Partitions, the First World War, the Second World War, communist regime, period of transformation – all these events had a significant impact on the cultural heritage of Poland. Many monuments were destroyed or lost, hence the greater importance of protecting what remains. These regulations, what should be said, fulfilled their task only partially. Despite the efforts to protect Polish monuments as fully as possible, many of them were destroyed. Most of the regulations imposed too many obligations on the monuments' conservators and did not provide for an efficient system of their registration and thus preservation and protection.

There was also a noticeable tendency for Polish lawmakers to adapt monument protection law to the current political thought dominating in the state. This tendency had a somewhat positive impact on the protection of historic monuments, as exemplified by the Decree of 1918, which expressed the need to protect historic monuments and cultural heritage in general as a manifestation of Polishness and independence of our country. On the other hand, when looking at the regulation of the 1962 Act, one can see the evident detriment in linking the need to protect monuments with political thought. The act gave strong expression to the communist ideology, which resulted in confiscation of many monuments in private hands for the benefit of the state, only to see them disappear. Also, the fact that certain events of major importance for Poland and Poles were rather inconvenient for the communist authorities (for example, the war of 1920 was represented as the Polish aggression against the young Soviet Russia) affected the protection of a significant part of the Polish cultural heritage, or to be more precise, certain objects simply fell out of legal protection in order to accommodate the political narrative.

However, after looking into different regulations on monument protection in Poland, one can also notice that each successive regulation has drawn on the previous one, often disregarding the fact that new needs for historic preservation have emerged as a result of the passage of time and changes in the factual situation. In this context the relation between the current Act of 2003 and the Act of 1962 is strongly visible. As Katarzyna Zalasieńska writes, in adopting the Act of 23 July 2003 on the protection

and preservation of historical monuments, the required axiological reflection was not performed in the era of political transformation, resulting in the change of ownership structure of the historical resources, consequently adopting the normative bases built on the axiological assumptions adopted under the Act of 15 February 1962 on the protection of cultural heritage, which negatively influences the effectiveness of the system of protection of immovable monuments in Poland. Thus we have a situation in which the old system of values has become “unstable” in the face of socio-economic changes of the beginning of the 90s, which resulted, among others, in a change of ownership status of the majority of historic monuments, while the new one still has not crystallised.³⁸

Of course, on a similar basis, the 1962 law also drew on its legal predecessors. Unfortunately, transferring similar regulations from one act to another without any reflection on changes in their axiological basis creates a situation in which the regulations cannot fully fulfil their functions, and the monuments suffer. Although new legal acts concerning the discussed issues should certainly draw from their predecessors, it is necessary to remember about the need to reflect and adjust the old institutions to the new circumstances.

References

- Artemiuk J., “Geneza pojęcia zabytku archeologicznego w prawie polskim”, *Folia Iuridica Universitatis Wratislaviensis* 2015, vol. 4(2).
- Burski K., “Normatywne podstawy ochrony dóbr kultury w PRL. Studium historyczno-prawne” [in:] *Prawo a ochrona dóbr kultury*, eds. P. Dobosz, M. Adamus, D. Sokołowska, Kraków 2014.
- Cherka M., *Ustawa o ochronie zabytków i opiece nad zabytkami. Komentarz*, LEX.
- Dobosz P., “Perspektywy prawa i organizacji administracji konserwatorskiej w 100-lecie powstania niepodległych służb ochrony zabytków w Polsce”, *Wiadomości Konserwatorskie* 2018, no. 56.
- Gerecka-Żołyńska A., “Realizacja międzynarodowych standardów ochrony dziedzictwa kulturalnego w polskiej ustawie o ochronie zabytków i opiece nad zabytkami”, *Ruch Prawniczy, Ekonomiczny i Socjologiczny* 2007, no. 4.
- Golat R., *Ustawa o ochronie zabytków i opiece nad zabytkami. Komentarz*, LEX.
- Mazur A., “Ograniczenia wywozu zabytków ruchomych w prawie polskim i czeskim”, *Zeszyty Naukowe Towarzystwa Doktorantów UJ. Nauki Społeczne* 2017, no. 17(2).
- Pruszyński J., *Dziedzictwo kultury Polski. Jego straty i ochrona prawna*, vol. 2, Kraków 2001.
- Pruszyński J., “Organizacja ochrony zabytków w dwudziestoleciu międzywojennym”, *Ochrona Zabytków* 1988, no. 1/2(161).
- Sługocki J., *Opieka nad zabytkiem nieruchomym. Problemy administracyjnoprawne*, Warszawa 2017.

³⁸ K. Zalańska, *Prawna ochrona zabytków...*, p. 17.

- Szymaniec P., “Polska myśl konserwatorska przełomu XIX i XX w. a rozwiązania Dekretu Rady Regencyjnej z dnia 31 października 1918 r. o opiece nad zabytkami sztuki i kultury” [in:] *Ochrona dóbr kultury w rozwoju historycznym*, ed. M. Różański, Olsztyn 2017.
- Zalasińska K., *Prawna ochrona zabytków nieruchomych w Polsce*, Warszawa 2010.
- Zeidler K., “O dobre prawo dla zabytków – rozważania na gruncie ustawy z 2003 r. o ochronie zabytków i opiece nad zabytkami” [in:] K. Zeidler, *Zabytki. Prawo i praktyka*, Gdańsk – Warszawa 2017.
- Zeidler K., “Pojęcie ‘dziedzictwa narodowego’ w Konstytucji RP i jego prawna ochrona” [in:] K. Zeidler, *Zabytki. Prawo i praktyka*, Gdańsk – Warszawa 2017.
- Zeidler K., *Zabytki. Prawo i praktyka*, Gdańsk – Warszawa 2017.
- Zeidler K., Marcinkowska M., *Dekret Rady Regencyjnej z 1918 r. o opiece nad zabytkami sztuki i kultury z komentarzem czyli eseje o prawie ochrony dziedzictwa kultury*, Gdańsk 2017.
- Zimna-Kawecka K., “Monument protection and organisation of conservation offices during the interwar period in Poland (on the example of Pomeranian Voivodeship) and the norms in the Act from 23 July 2003 concerning monument protection and care for monuments”, *Wiadomości Konserwatorskie* 2010, no. 27.

Sources of law

- Decree of the Regency Council of 31 October 1918 on the care of cultural and artistic monuments (*Journal of Laws* of 1918 no. 16, item 36).
- Legislative decree of the President of the Republic of Poland of 6 March 1928 on the care of monuments (*Journal of Laws* of 1928, no. 29, item 265, as amended).
- Decree of 1 March 1946 on the registration and prohibition of export of works of art and objects of artistic, historical or cultural value (*Journal of Laws* of 1946, no. 14, item 99).
- 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.
- Act of 15 February 1962 on the protection of cultural assets and museums (*Journal of Laws* of 1962, no. 10, item 48, as amended).
- Convention for the Protection of the Architectural Heritage of Europe adopted on 3 October 1985.
- Act of 3 February 2001 on the protection of Fryderyk Chopin’s heritage (consolidated text: *Journal of Laws* of 2020, item 115).
- Act of 23 July 2003 on the protection and preservation of monuments (consolidated text: *Journal of Laws* of 2020, item 282, as amended).

Summary

Review of the key legal acts concerning the protection of historical monuments in Poland from 1918 onwards

The protection of historical monuments in Poland is an important issue. Polish cultural heritage has undergone many challenging events, therefore its protection is crucial. This article will discuss the most fundamental normative acts concerning protection of historical monuments as

parts of cultural heritage, which have been issued since Poland regained its independence, by the communist regime, until today. Presenting this issues in the form of a review will allow for better understanding of current regulations and the current state of Polish historical monuments.

Keywords: cultural heritage, Poland, cultural heritage protection

Streszczenie

Przegląd kluczowych aktów prawa ochrony zabytków w Polsce (od 1918 r. do prawa aktualnie obowiązującego)

Ochrona zabytków w Polsce stanowi niezwykle istotne zagadnienie, przede wszystkim ze względu na fakt, że polskie dziedzictwo kultury na przełomie lat doświadczyło wielu różnorodnych wyzwań. W niniejszym artykule omówiono najistotniejsze akty normatywne dotyczące ochrony zabytków, które były wydawane od momentu odzyskania przez Polskę niepodległości, poprzez okres obowiązującego na jej obszarze ustroju komunistycznego, do dnia dzisiejszego. Przedstawienie tej problematyki w formie przeglądu pozwoli na lepsze zrozumienie obecnie obowiązujących przepisów oraz aktualnego stanu polskich zabytków.

Słowa kluczowe: dziedzictwo kultury, Polska, ochrona zabytków