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# OVERVIEW OF 2018 AMENDMENTS TO THE ACT ON ORGANIZING AND RUNNING CULTURAL ACTIVITY AND THE ACT ON MUSEUMS

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**Abstract:** The year 2018 did not yield any breakthrough amendments to the Act on Museums. Those adopted were essentially meant to either adjust or complement the existing acts, and were adopted as the consequence of the amendments to other laws. However, the Act on Organizing and Running Cultural Activity, which actually stands as the systemic reference, particularly when it comes to museums operating as cultural institutions, was amended in 2018 to a greater extent.

The widest range of the above amendments related to the organizational aspects of the operation of Polish cultural institutions. Firstly, the option of establishing cultural institutions with their seat on the territory of Poland was introduced; this on the grounds of contracts concluded by ministers and managers of central government offices with the organizations active within the area of the protection of national heritage and established in compliance with foreign law (Amendment of 12 April 2018 to the Law on Organizing and Running Cultural Activity).

Additionally, the provisions defining competition for the appointment of the director of a cultural institution in compliance with the Amendment of 6 December 2018 to the above Act were substantially extended. The adjusting

character in this context can be seen in the amendment to Article 16.4.3 of the Act on Organizing and Running Cultural Activity resulting from the new provisions on the representative trade union organization in the Trade Unions Act, resulting from the Act's amendment of 5 July 2018. The second scope of the discussed amendments include those of financial character.

This can be said both of the amendment of 12 April 2018, related to designated fund and foreseeing allocating them for tasks under state patronage, as well as of the Amendments of 8 April 2017 to the Act on Organizing and Running Cultural Activity in relation to awarding state aid from Norway Funds and EEA.

As far as amendments to the Act on Museums in 2018 are concerned, these were reduced to two of very limited-range ones, so-called terminology amendments of 3 August 2018 within the framework of the regulations introducing the Act on Higher Education and Science, limited to the new phrasing of Articles 10.3.1 and 10.3.2 of the Act on Museums, these dealing currently with postgraduate students, and the amendment of 28 January 2018 consisting in incorporating new Par. 6b in the Act on Museums opening the option for the Medal of the "Guardian of National Memorial Sites".

**Keywords:** act amendments, state aid (EEA), "foreign cultural institutions", competition for director position, postgraduate students, "Guardian of National Memorial Sites" Medal.

**In compliance with the provisions of Art. 4 of the Act on Museums, for issues not covered by the Act, the provisions of the Act on Organizing and Running Cultural Activity shall be applied. The latter does have an essential systemic importance for museums, particularly those operating as independent cultural institutions, or as units within the structure of such an institution.**

Therefore, in the below overview focusing on the legislative amendments adopted in 2018, apart from the amendments to the Act on Museums, and these were relatively few, the first to be presented will also be the amendments to the Act on Organizing and Running Cultural Activity. Interestingly, in 2018 the consolidated texts of the above Acts were published: Journal of Laws of 2018 respectively: 1) the Act on Organizing and Running Cultural Activity as Item 1983, and 2) the Act on Museums as Item 720.

### **Amendments to the Act on Organizing and Running Cultural Activity**

In the Act on Organizing and Running Cultural Activity of 25 October 1991, below referred to as the Act on Cultural Activity, in late 2017 and in 2018 amendments were adopted as the result of 4 amendments to its regulations. Although the introduced changes do not directly refer to museums, it would be worth characterizing them in order to become acquainted with the current legal status quo resulting from the discussed amendments.

#### **Simplifications related to state aid**

The first of the 3 amendments in question is that of 8 December 2017 published in the Journal of Laws of 2018, Item 152. It provided for adding a new Art. 28 to the Act on Cultural Activity in force as of 3 February 2018. In compliance with Art. 28.1, the minister responsible for culture and national heritage can grant state aid for cultural activity as the aid granting body in compliance with the provisions of the Act on Procedural Issues Concerning State Aid of 30 April 2004 (Journal of Laws of 2018, Item 362) as implementation of an agreement concluded between the European Union and an EFTA (European Free Trade Association) member state or states.

Currently four European countries are EFTA member states: Iceland, Lichtenstein, Norway, and Switzerland. The three first of them and EU member states, including Poland, form the European Economic Area (EEA). The essence of the above-amendments lies therefore in creating Polish legislation provisions for an effective usage of the non-EU financial resources, these mainly being the Norwegian Financial Mechanism (funded mainly by Norway) and the EEA Financial Mechanism (next to Norway, financed also by Island and Lichtenstein).

Par. 2 of Art. 28a. of the Act on Cultural Activity stipulates the possibility for the minister responsible for culture and national heritage to provide by way of regulations: 1) the conditions and procedures of assigning state aid, and 2) detailed purpose of state aid, if this is resultant of the Agreement for granting the aid, in the event that the subsidy granting results from the implementation of an agreement concluded between the EU and an EFTA member state or states.

Thanks to this new solution, notification obligation as stipulated by EU regulations shall not be applicable to public aid assigned to culture as part of the above financial mechanisms. Notification is not required by state aid granted as part of aid programmes in compliance with Art. 2.7 of the Act on Procedural Issues Concerning State Aid of 30 April 2004 (Journal of Laws of 2018, Item 362), notification understood as aid scheme being acts that meet the criteria as stipulated by Art. 1.d of the Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Art. 108 of the Treaty of Functioning of the European Union. The status of such aid schemes is given to minister's regulations issued in compliance with Art.28a.2 of the Act on Cultural Activity.

The case of such regulations is the Ordinance of the Minister of Culture and National Heritage of 13 July 2018, in force as of 8 August 2018, on granting state aid for cultural activity in the framework of the 'Culture' Programme with the financing from the EEA Financial Mechanism for 2014–2021 (Journal of Laws of 2018, Item 1419).

Par. 2 of this Ordinance stipulates that state aid is granted to projects being part of the Programme which meet the requirements as stipulated in Art. 53 of the Commission

Regulation (UE) 651/2014 of 17 June 2014 declaring certain categories of aid compatible with internal market with the application of Arts. 107 and 108 of the Treaty of the Functioning of the EU (Official Journal of the UE L 187 of 26 June 2014, p. 1 with later amendments) State aid is granted in compliance with agreements on financing a project as a form of subsidy meant to cover eligible costs of the project selected by the minister via competition, however this selection mode shall be applicable only to predefined projects as specified in the Agreement between the State-Donor and the State-Beneficiary (see. Par. 11 of the above Ordinance). The requirements for applications submitted for project-allocated subsidies the applying entity submits to the minister are defined in Par. 12 of the above Ordinance.

#### **Amendments related to 'foreign institutions'**

Due to historical conditionings, resulting particularly from the fact that over a long period of time no Polish statehood existed during Poland's partitions, and due to the activity of Poles abroad, beyond the territory of the Republic of Poland, there existed numerous institutions, including museums, which made essential efforts to preserve and develop Polish cultural heritage. Among them, e.g. the Polish Museum in Rapperswil, whose history dates back to 1870, considered to be one of the oldest Polish institutions existing off the Polish territory.

Until not so long ago, the Act on Cultural Activity had not made any systemic provisions for supporting such a type of foreign institutions or initiatives. This situation essentially changed as of 23 June 2018 together with the entering into force of the amendment of 12 April 2018 to the above Act. The amendment was published in the Journal of Laws of 2018, Item 1105. The foreseen changes are essentially of a two-fold character: financial and institutional. As for the financial aspects, Art. 1.2 of the Act on Cultural Activity has been rephrased. Presently, the stipulations made show that

the state works as a patron of cultural activity consisting in supporting and promoting creative activity, education, and cultural learning, cultural activities and initiatives, as well as care of monuments and national heritage protection both within the Republic of Poland and abroad.

Moreover, an essential extension was given to Art. 9a of the Act on Cultural Activity, since the regulation stipulates that the minister responsible for culture and national heritage shall define by way of regulation not only the range of tasks under state patronage, but also 4 other subsidy aspects, particularly detailed conditions, means, and modes for subsidy allocation, subsidy transfer, and clearing, all these mentioned in Art.5.2 and Art. 9.3, these also to the subsidies specified in Art. 28.1a of the above Act.

The new applicable regulation in this respect is the Ordinance of the Minister of Culture and National Heritage of 18 December 2018 in force as of 20 December 2018 with respect to the range of tasks under state patronage, to granting designated subsidies for tasks covered by state patronage, and to subsidies to entities conducting activity in the sphere of culture and protection of national heritage (Journal of Laws of 2018, Item 2374). This had been preceded by the Ordinance of the Minister of Culture of 1 September 2005 as for the range of tasks under state patronage, detailed mode for submitting applications for subsidies, as well as modes of transfer and clearing of the subsidies (Journal of Laws No. 177, item 1.474 with later amendments).

Following the provisions of Art. 16 of the new Ordinance, the so-far provisions (Ordinance of 1 September 2005) shall be applicable to the applications submitted and not implemented prior to its entering into force, as well as to the grant or subsidy agreements concluded before that date.

The very same amendment was also reflected in Art. 281a of the Act on Cultural Activity whose amended provisions stipulate that the minister responsible for culture and national heritage, and on his approval state cultural institutions, whose organizer the minister is, can provide funding, including for investment and current expenditures, to subjects pursuing activity in the field of culture and protection of national heritage, also beyond the territory of the Republic of Poland.

If this wording is compared with the previous stipulations provided in Art. 28.1a of the Act on Cultural Activity, three new elements can be found: the funding awarding process is no longer conducted only by state cultural institutions, but also by the minister on his/her own accord; specifying that the funding in question, apart from investment expenditures, can also be allocated to current expenditures to subjects pursuing activity in the field of culture and protection of national heritage, also beyond the territory of the Republic of Poland.

As far as the institutional aspects in the discussed amendments are concerned, of key importance is the fact that two new sections: 2a and 2b were added to Art. 21 of the Act on Cultural Activity. The first of these stipulates that organizers as defined in Art. 21.1, i.e. ministers or heads of central offices, in compliance with an agreement concluded with a subject pursuing activity in the field of protection of national heritage, shall have the right to conclude an agreement with the subject founded in compliance with foreign legal regulations, and pursuing activity of protection

of cultural heritage, in order to establish a cultural institution based on the territory of the Republic of Poland. Meanwhile, Art. 21.2b allows for also a natural person, a legal entity, or an organizational entity without legal personality, namely a defined entity of the Polish law, e.g. a foundation/an NGO established in Poland whose goal is to support the protection of national heritage, to be a party to such an agreement.

The remaining amendments to Art. 21 of the Act on Cultural Activity introduced with the discussed amendment are meant mainly to appropriately adjust this legislations in order to incorporate into other provisions of this Act the new formula of cultural institutions established in agreements with foreign entities. This applies to the amendments in Art.21.3 and Art. 21.5, as well as Art. 26.1 respectively of the Act on Cultural Activity (see Art.1.3b and c, as well as 1.4 and 1.5 of the discussed amendment).

In this context it is possibly one adjusting amendment that stands out, namely the one related to the staff. A new Art. 26f was added to the Act on Cultural Activity, stipulating that employees of cultural institution, as defined in Art.21.2a, can be employed in compliance with the regulations of the country they work in.

### Amendment related to the representative character of the establishment trade union organization

An equally adjusting character can be seen in the amendments to the Act on Cultural Activity in Art. 5 of the Act of 5 July of 2018 on the Amendment to the Act on Trade Unions and to some other acts (Journal of Laws of 2018, Item 1608). In compliance with the provisions of this amendment that essentially entered into force as of 1 January 2019, Art. 3a titled *Representative trade union organization* was added to the Act on Trade Unions. Within this Chapter, a representative establishment trade union organization is defined in Art. 253 of the Act. In Art. 25.1 and 25.2 the provisions stipulate that this kind of organization can be seen in the establishment trade union organization which: 1) forms a structural unit or a member unit of a sectoral trade union organization regarded as representative in compliance with the stipulations of the Act on the Social Dialogue Council grouping at least 8% of the employees providing paid labour to the employer; or 2) grouping at least 15% of the employees providing paid labour to the employer, however if none of the stipulations is met, a representative establishment trade union organization is the one that groups the largest number of employees providing paid labour to the employer.

The above regulations are now pointed to in the new phrasing of Art.16.4.3 of the Act on Cultural Activity resulting from the above amendment. Art. 16.4 of the Act makes provisions for the composition of a competition commission formed by the organizer in order to run a competition for the director to head local-government cultural institutions, including museums, whose list was provided by the Minister of Culture and National Heritage in the Ordinance of 5 July 2015 regarding the register of local-government cultural institutions whose directors are appointed via a competition (Journal of Laws of 2015, Item 1298).

In compliance with the latest version of Art. 16.4.3 of the Act on Cultural Activity, the contest jury is composed inter

alia of two representatives of the establishment trade union in accordance to Art. 253.1. or Art. 253.2 of the Act on Trade Unions of 23 May 1991 operating within the cultural institution in which the competition is organized.

The limited impact of the discussed amendment on museum practice, apart from the fact that Art 16.4.3 of the Act on Cultural Activity is applicable only to specific museums as listed in the Annex to the above Ordinance of 5 July 2015, also results from the fact that if in a museum which has the status of a cultural institution there are no establishment trade union organizations, as stipulated in the above provisions, the organizer shall include two museum staff representatives in their place (Art. 16.5 of the Act on Cultural Activity).

In a recent ruling of 7 February 2018 (File II OSK 1009/17, Lex No 2452775), the Supreme Administrative Court of Poland judges that *the organizer is obliged to consider the representatives of the institution's employees elected by them. Such a contest jury composition is to guarantee the staff the influence on the choice of the individual meant to be appointed as the institution's director. Therefore, not including the representative chosen by the institution's staff violates Art.16.5 of the Act on Organizing and Running Cultural Activity of 1991.*

### Competition-related amendment

More changes can be found in the amendment to the Act of Cultural Activity of 6 December 2018 (Journal of Laws of 2019, item 115), essentially in force as of 19 April 2019. This amendment primarily consists in an essential extension of Art. 16 of the Act on Cultural Activity providing for competitions for the director of a cultural institution. Entering into force as of 19 April 2019, the Article has been extended by new paragraphs: 3d, 3e, 5a-5c, as well as 7-13, respectively defining requirements for providing public notice of the intent of organizing a competition as defined in Art.16.2; the content of the announcement of the competition; the tasks of the contest jury in the competition; the requirement for the organizer to provide for the competition operation, and the principles for awarding travel allowance to jury members; the requirements which contest jury members have to meet; as well as principles of removing deficiencies and completing missing elements in the bids; causes and consequences of not adjudicating the competition; as well as the requirement to provide the candidate selected in the competition with the organizational and financial conditions under which the cultural institution operates.

The above amendment also extended Art. 15 of the Act on Cultural Activity to which new par. 5a was added stipulating the requirement of providing public notice of the programme of activity as stipulated in Art.15.5, namely the activity programme of the cultural institution. As a consequence of the amendment to Art. 16.6 of the Act on Cultural Activity, providing for the executive regulation to be issued in this respect, the entry into force of the discussed amendment shall result in the minister of culture and national heritage issuing a new ordinance that shall overrule the Ordinance of the Minister of Culture on Organizing and Procedures for the Competition for Director of Cultural Institutions of 30 June 2004 (Journal of Laws of 2004, Items: 154, 1629).

### Reform of tertiary education and science versus museum activity

As of 1 October 2018, the Act on Higher Education and Science of 20 July 2018 (Journal of Laws of 2018, Item 1668 with later amendments) partially entered into force. The entry into force of particular regulations of the Act is stipulated by Art.1 of the Act on Regulations for Entry into Force of the Act on Higher Education and Science of 3 August 2018 (Journal of Laws of 2018, Item 1669 with amendments) Both aforementioned Acts constitute a new regulation for higher education and science, also stipulating principles important for museums, since the scientific aspect of museum operation remains obvious. In the Act on Museums the reference to science is to be found in the regulation of museum goals implemented particularly through e.g. scientific elaboration of the collections; storage of monuments to be accessible for science-oriented purposes; organizing research and scientific expeditions, these including archaeological ones; and making collections available for learning and scientific goals (Art. 2 of the Act on Museums).

A scientific context can also be found in Art. 5 of the Act on Museums in relation to museum employees, particularly mueseologists, fulfilling the tasks, especially when the above-mentioned scientific context is concerned. The person employed as a qualified curator shall have e.g. a doctoral degree in the domain related to the museum's collections or a PhD in art in this very domain (Art.32a.1 of the Act on Museums).

The professional achievements required for the position of a qualified curator and curator shall include e.g. authoring or co-authoring of scientific publications, scientific publications for the general public, and informative materials; conducting scientific research and documentation work; participation in national or international scientific conferences, or in the committees organizing them; sitting on editorial or advisory boards of journals, as well as in domestic or international organizations; membership in domestic or international organizations or scientific, museum, or conservatory associations, as well as others of creative profiles (Art. 33b.2 of the Act on Museums).

Furthermore, in the Act on Higher Education and Science new principles of educating doctoral students are regulated (see Arts. 198-216 of the Act which shall enter into force as of 1 October 2019, in compliance with Art. 1.3 of the Regulations entering the above Act into force). Instead of doctoral studies the regulations foresee doctoral schools. Transitory regulations in this respect are contained in Art. 329 of the Regulations for introducing the Act on Higher Education and Science.

The changes in educating doctoral students have been reflected in respective amendments to the Act on Museums in compliance with Art. 33 of Regulations for introducing the Act on Higher Education and Science. The amendments came into force as of 1 October 2018, and were merely of an adjusting terminological character. They applied to the wording of Art.10.3a.1 and Art.10.3a.2 of the Act on Museums. Art.10 provides for reduced admission tickets to state museums, listing categories of the public to whom that discount is applicable.

The wording corrections introduced to the above paragraphs are limited to changes in names of the enumerated

groups. Thus instead of individuals doing doctoral studies they speak of doctoral students. The amended Art.10.3a.1 of the Act on Museums currently reads that the following groups are entitled to discount admission tickets to state museum: pupils at schools of the education system, students at Colleges of Social Workers, university students and doctoral students. Accordingly, Art. 10.3a.2 of the Act on Museums, next to school pupils and tertiary education students, mentions doctoral students who are citizens of EU member states, of the Swiss Confederation, and of EFTA member states, which are contracting Parties to the EEA Agreement.

### **‘Guardian of National Memorial Sites’ Medal**

As of 15 May 2018, Art.6b. of the Act on Museums enters into force, this added through the provisions of Art. 3 of the Act on the Amendment to the Act on National Remembrance Institute – Commission for the Prosecution of Crimes against the Polish Nation, the Act on War Graves and Cemeteries, Act on Museums, and the Act on the Criminal Liability of Collective Entities (Journal of Laws of 2018, Item 369).

The provisions of the aforementioned article allow the minister responsible for culture and national heritage to award the ‘Guardian of National Memorial Sites’ Medal, either on his own initiative, or as motioned by the President of the National Remembrance Institute – Commission for the Prosecution of Crimes, an NGO, or any other organizational unit dealing with commemorating or taking care of national memorial sites. The Medal can be awarded to a natural person, a legal entity, or an organizational entity without legal personality who contribute to national remembrance.

The procedures leading to awarding the Medal are specified in the Ordinance related to the ‘Guardian of National Memorial Sites’ Medal of 30 October 2018, in force

as of 30 November 2018 (Journal of Laws of 2018, Item 2146). Moreover, it specifies e.g. the relevant application format, the Medal’s design, and the card testifying to its awarding.

Par.3 of the above Ordinance stipulates that the applications shall be submitted to the minister responsible for culture and national heritage biannually: by 30 June and by 31 December respectively. In compliance with the template as specified in Annex 1 to the above Ordinance, one of the elements of the request for awarding the ‘Guardian of National Memorial Sites’ Medal shall be the justification of the request containing the descriptions of the contributions of the potential recipient to promoting the idea of national remembrance, and information on the earlier awarded medals on honours.

In the context of the regulations of the new Medal, museums can be viewed both as application authors, as well as potential recipients of the Medal. A museum can be an applicant for the Medal depending on whether it deals with commemorating remembrance and taking care of national memorial sites. The activity in the field also has an impact on the potential awarding of the Medal in question to the museum, since it has to be justified with the potential recipient’s contributions to promoting the idea of national remembrance. Since the Medal can be awarded not only a legal entity, or an organizational entity without legal personality, but also to a natural person, individuals connected with museum activities, including museologists, can be potential Medal recipients. too, provided they boast contribution to the above sphere.

The new regulations for awarding the ‘Guardian of National Memorial Sites’ Medal are particularly important for museums commemorating national memorial sites as their core activity, this being testified to by their very names pointing to the ‘national memorial site’, including martyrology museums.

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