



# Protection of tangible and intangible cultural heritage Contemporary development directions

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AT Wydawnictwo

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and intangible cultural heritage –  
contemporary development directions



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SCIENTIFIC EDITORS

Piotr Dobosz, Witold Górny,  
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KRAKÓW 2020

*Protection of tangible and intangible cultural heritage – contemporary development directions*

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ISBN 978-83-66445-16-1

The publication was funded by the funds of the Institute of Law for the Protection of Heritage, the Scientific Society for Legal Protection of Cultural Property of the TBSP UJ and Piotr Dobosz



AT Wydawnictwo

[www.atwydawnictwo.pl](http://www.atwydawnictwo.pl)

# Table of Contents

7 Abbreviation list

9 Introduction

## **I. PROTECTION OF TANGIBLE AND INTANGIBLE CULTURAL HERITAGE**

### **CHAPTER I**

**Andrzej Kadłuczka**

15 Between the tangibility of (historical) architecture and the intangibility of its meanings and symbols

### **CHAPTER II**

**Piotr Dobosz**

25 Family cultural heritage and the subjective right to participate in local government as foundations underlying the position of an individual in contemporary society. Part I

### **CHAPTER III**

**Ewa Koziń**

33 Praxeological dimension of the *ex post immediate* assessment of the efficiency of cultural projects' realization

### **CHAPTER IV**

**Luis Javier Capote-Pérez**

45 Tangible and intangible heritage in Spanish law

### **CHAPTER V**

**Edyta Gołąb**

55 Contemporary trends in experiencing cultural heritage

## **II. PROTECTION OF TANGIBLE CULTURAL HERITAGE – CASE STUDIES**

### **CHAPTER VI**

**Dominika Kuśnierz-Krupa**

67 Urban cultural heritage – Current conservation problems: The case of Skrzydlna

### **CHAPTER VII**

**Anna Mazur**

79 Access to Polish cultural goods abroad

**CHAPTER VIII****Ricardo Arlindo Dias Neves**

- 91 International police cooperation and the protection of cultural property

**CHAPTER IX****Oksana Hulkevych**

- 103 Protection of monuments and their territories in Ukraine: The issue of ownership

**CHAPTER X****Marta Maria Drachal**

- 117 Protection of roadside alleys and historic roadside alleys – selected problems related to the discrepancies in the competences of nature protection and monument protection authorities

**III. PROTECTION OF INTANGIBLE CULTURAL HERITAGE – CASE STUDIES****CHAPTER XI****Małgorzata Węgrzak**

- 131 The principles of cultural heritage protection and public access to cultural heritage with reference to the principle of integrity of cultural objects

**CHAPTER XII****Witold Górny**

- 143 Address markings – witnesses to the history of Kraków's territorial divisions

**CHAPTER XIII****Adam Kozień**

- 155 A university's cultural heritage based on the administrative law approach as exemplified by the Jagiellonian University in Kraków

**CHAPTER XIV****Bartłomiej Bodziński-Guzik, Rafał Stożek**

- 169 Protection through prevention – theatre as an extra-legal means of strengthening cultural diversity

183 Literature

195 Legal Acts

198 Judgments

199 Internet sources

202 Other sources

## Abbreviation list

- CDEA – Center for European and German Studies
- CE – 1978 Spanish Constitution (*Constitución Española*), BOE-A-1978-31229, 29.12.1978.
- DOCOMOMO – International Working Party for Document and Conservation of Buildings, Sites and Neighbourhoods of the Modern Movement
- Dz.U. – Pol. Dziennik Ustaw Rzeczypospolitej Polskiej; Eng. – Journal of Laws of the Republic of Poland
- EU – European Union
- EUROPOL – European Union Agency for Law Enforcement Cooperation
- FEDEX – Federal Express
- GDOŚ – Pol. Regionalna Dyrekcja Ochrony Środowiska; Eng. – General Directorate for Environmental Protection
- ICOMOS – International Council on Monuments and Sites
- ILA – International Law Association
- ILC – International Law Commission
- INTERPOL – International Criminal Police Organization
- IPC – International Police Cooperation
- LAHP – On the archaeological heritage protection: Law of Ukraine of 8.03.2004, No. 1626-IV
- LCHP – On the cultural heritage protection: Law of Ukraine of 08.06.2000, No. 1805-III
- LL.M. – Master of Laws
- LPHE – 1985 Spanish Historical Heritage Act (*Ley 16/1985, de 25 de junio, del Patrimonio Histórico Español*), BOE-A-1985-12534, 29.6.1985.
- MNiSW – Pol. Ministerstwo Nauki i Szkolnictwa Wyższego; Eng. – Ministry of Science and Higher Education
- MROZ – Pol. Międzynarodowa Rada Ochrony Zabytków; Eng. – International Council on Monuments and Sites (ICOMOS)
- NAWA – Pol. Narodowa Agencja Wymiany Akademickiej; Eng. – Polish National Agency for Academic Exchange
- NGO – *non-government organization*
- ODIHR – Office for Democratic Institutions and Human Rights
- OJ EU – Official Journal of the European Union
- OSCE – Organization for Security and Co-operation in Europe
- PAN – Pol. Polska Akademia Nauk; Eng. – Polish Academy of Sciences
- Ph.D. – Doctor of Philosophy



PKN ICOMOS – Pol. Polski Komitet Narodowy ICOMOS; Eng. – Polish National Committee  
ICOMOS

PUCRS – Pontifical Catholic University in the State of Rio Grande do Sul/Brazil

RDOŚ – Pol. Regionalna Dyrekcja Ochrony Środowiska; Eng. – Regional Directorate  
for Environmental Protection

RP – Pol. Rzeczpospolita Polska; Eng. – Republic of Poland

SARP – Pol. Stowarzyszenie Architektów Polskich; Eng. – Association of Polish Architects

SKOZK – Społeczny Komitet Odnowy Zabytków Krakowa; Eng. – Social Committee  
for the Restoration of Kraków's Monuments

SN – Pol. Sąd Najwyższy; Eng. – Supreme Court

TBSP UJ – Pol. Towarzystwo Biblioteki Słuchaczy Prawa Uniwersytetu Jagiellońskiego;  
Eng. – Society of Law Students' Library of the Jagiellonian University

UEK – Pol. Uniwersytet Ekonomiczny w Krakowie; Eng. – Cracow University of Economics

UFRGS – Federal University in the State of Rio Grande do Sul/Brazil

UJ – Pol. Uniwersytet Jagielloński; Eng. – Jagiellonian University

UNESCO – United Nations Educational, Scientific and Cultural Organization

UNIDROIT – International Institute for the Unification of Private Law

UPS – United Parcel Service

WPiA – Pol. Wydział Prawa i Administracji; Eng. – Faculty of Law and Administration

dr – Pol. doktor; Eng. – Ph.D

e.g. – for example

Ed. – editor

Eds. – Editors

eng. – English

ff. – following

Fig. – figure

hab. – Pol. habilitowany; Eng. – habilitated

i.e. – that is, it means

il./Il. – illustration

inż. – Pol. inżynier; Eng. – engineer

inż. arch. – Pol. inżynier architekt; Eng. – architect engineer

mgr – Pol. magister; Eng. – Master of Science/Master of Arts

n°/No. – number, issue

Nr – Pol. numer; Eng. – number

p. – page

pol. – Polish

pp. – pages

prof. – professor

r. – Pol. rok; Eng. – year

Vol. – volume

## Introduction

Cultural heritage is a notion made of a broad catalogue of designates which are classified both as tangible and non-tangible heritage, and which is subject to continuous changes and transformations. In the contemporary digitalized world, there are, on the one hand, numerous possibilities which allow for a more effective protection and documentation of heritage as well as better knowledge about it and how to convey it from past to future generations. On the other hand, there are increasing risks to cultural heritage protection. Thus, cultural heritage, understood broadly and from various angles, including: legal, cultural, social, political, and economic – has become a subject of numerous academic dissertations written within different academic disciplines. However, a strict limitation to one specific discipline is not an appropriate approach when it comes to the analysis of cultural heritage. Such an approach does not allow for a holistic interpretation of complex and multi-faceted problems that characterize cultural heritage. Therefore, it is necessary to opt for an interdisciplinary approach, which allows us to better grasp the complexity of the problems which are related to the topic of cultural heritage. In the context of progressing globalization, it is also difficult to restrict the issue of cultural heritage to specific states, nations, regions or local communities. This, however, does not mean that the origin of their heritage should not be adequately acknowledged. Thus, it is recommended that at the international level, platforms of cooperation between the states, international organizations, non-governmental organizations are established to ensure protection of heritage of local, regional, national or state communities. Importantly, a part of their heritage, which reveals traits of universality, constitutes the world heritage, whose protection, preservation and conveyance to future generations is in the best interest of international heritage. Similarly, from the legal perspective, heritage is subject to protection both at the international, national and local levels.

Admittedly, interest in cultural heritage is noticeable not only at the institutional or scientific level, but also, and increasingly more often among the societies. This is evidenced by a large number of museums, which are visited by many people all over the world. In addition, there is a clear correlation between the development

of tourism and visits to historic sites and buildings, organization of numerous exhibitions, festivals, symposia, and cultural events, which are, more and more frequently, of international recognition. However, it is very risky to allow for an excessive commercialization of heritage and reducing it to a fast-moving commodity. Cultural heritage should also not be subjected to the needs of the contemporary world, which would lead to some excessive interferences, and consequently its transformation, or even worse, disappearance of its original form. Therefore, a certain balance needs to be found between the preservation of heritage in its intact form and its excessive transformation, adjustment to the needs of the contemporary world or commercialization.

The goal of this monographic publication is to present a wide spectrum of contemporary problems and challenges that are related to cultural heritage, as well as to point out to the directions for development of tangible and non-tangible cultural heritage through an interdisciplinary approach, as well as from an international, national, regional and local perspective.

The issues covered in this publication are of interdisciplinary nature. They focus on topics that are related to the current challenges and directions for development of cultural heritage, both tangible and non-tangible, both in the international, national, regional as well as local perspective. The tackled problems are both abstract and concrete. The publication provides analyses of the protection of cultural heritage and historic buildings, the principle of cultural heritage protection, the principle of common access to cultural heritage, the principle of integrity of cultural heritage, international cooperation and the policy of cultural resources protection, as well as tangible and non-tangible heritage. It analyses these phenomena from the perspective of law at the international, national, regional and local levels, also taking into consideration legal orders operating in various states, as well as preventive actions in the scope of cultural heritage protection. Theoretical analyses are supplemented by the analyses of specific case studies. Analyses of urban cultural heritage and its contemporary problems in the area of conservation are completed by case studies of a former medieval town of Skrzydlina, while the problems of heritage of universities is illustrated by the case study of the Jagiellonian University in Kraków. Lastly, protection which assumes preventive activities, is discussed on the example of a theatre.

The wide spectrum of the discussed issues, listed above, depicts the multidimensionality and interdisciplinary character of the problems of cultural heritage. Thus, it calls for a postulate to the academic community to carry out an interdisciplinary debate on the issues related to cultural heritage, and to the international, national, regional and local legislators to take into consideration the postulates of

the representatives of various academic disciplines that deal with the problems of cultural heritage. The latter is especially relevant as heritage protection to a large extent depends on the adopted legal regulations. As editors of this monographic publication, we are honoured to be able to broaden and develop the academic and social discourse on the various dimensions of cultural heritage, contributing to the increase of effectiveness of cultural heritage protection, not only in a normative but also beyond-normative perspective. We hope that reading this publication will broaden your knowledge on cultural heritage, and increase your interest in this very interesting and important issue.

Scientific editors:

Piotr Dobosz, Witold Górny, Adam Kozień, Anna Mazur

Kraków, 30<sup>th</sup> September 2020



# I

## Protection of tangible and intangible cultural heritage



## CHAPTER I

ANDRZEJ KADŁUCZKA

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# Between the tangibility of (historical) architecture and the intangibility of its meanings and symbols

### SUMMARY

Architecture affects the viewer via functional-spatial solutions defined using a material substance, but it is also a vehicle for ideas, symbols and meanings that make up its intangible value. The continued existence of architecture in space-time is a dynamic process, as its transformation takes place not only in the physical structure of the edifice – the form – but also in its semantic layers – the content of which is of key significance in the shaping of the cultural heritage conservation doctrines. The Nara Document of Authenticity (1994) brought revolutionary changes in the understanding of the authenticity of historical substance as well as a new ontological status for monuments which shifted the priority from protecting a building's material substance to the area of protecting and preserving the memory of the past. This is aided by the current changes in the contemporary world, in which a surplus of novelties leads to a monument's rapid aging and is conducive to the spread of the musealisation of the public space. In this way, a new orientation for societies is created, one that perceives cultural heritage as a form of capital and that can be used in sustainable civilisational development. The basis for this development is the individual and collective mentality of both individuals and societies as the inheritors and caretakers of cultural heritage. They need to be aware of the need to preserve the intangible memory of the past which facilitates the protection of existing relics and the restoration of lost or forgotten historical artefacts in the existential space of contemporary humans.

**KEY WORDS:** architecture, cultural heritage, memory, tangible and intangible values

*“Who hid something in memory, hid well”*

– Dante Alighieri [*Leksykon złotych myśli (Lexicon of golden thoughts)*, 1988].

## 1. INTRODUCTION

This short quote by Dante Alighieri can be seen as highly useful advice on how to protect architectural monuments. Yet, it does not explain the mechanisms that need to be used to obtain the state of mind and spirit that was postulated by the great philosopher and poet, and what values one should preserve in memory?



However, this short verse by Dante also summarises the current understanding of the goal now pursued by heritage conservation: to primarily focus on human memory as the best conveyor of the past to the present and further – into the future – and the conditions for the physical existence of the monument in our existential space.

## 2. ARCHITECTURE AS THE CARRIER OF TANGIBLE AND INTANGIBLE CULTURAL HERITAGE

If we ask the user or developer of a building how they perceive its fundamental value, the answer is usually associated with functionality and its accompanying form. In both cases, these values refer to material substance. The function and the form that should arise from it – providing the expected balance of these two elements of a building – is the desired rationality of architecture. In reference to the history and theory of conservation, then of course this is Viollet-le-Duc's lecture on the rationality of Gothic architecture.

Over 150 years ago, Viollet-le-Duc wrote in his *Dictionnaire raisonné de l'architecture française du XIe au XVIe siècle* (1868): "If we encounter works of architecture that meet the conditions of harmony between form, the means applied and the object, then we say: these works have style – and we are in the right to say so. What then, would style be, if not the display of these values" [*Teoretycy, artyści i krytycy o sztuce, 1700–1870* (*Theorists, Artists and Critics on Art, 1700–1870*), 1974; Viollet-le-Duc, 1868]. It is therefore no coincidence that Piotr Biegański saw in Viollet-le-Duc a theorist of rationalism in architecture, which was one of the main currents of Modernism, and stated so in his well-known synthesis of the genesis of contemporary architecture [Biegański, 1972]. The theoretical contribution of the French father of monument conservation was seen similarly by Teresa Jakimowicz, who emphasised that it had been Viollet-le-Duc's conservation practice that forced one to analytically deconstruct the work under restoration and to solve the technical problems: "The practical side of Viollet-le-Duc's work was of profound significance, both concerning the development of his conservation doctrine and the theory of rationalism and constructivism of medieval architecture" [Jakimowicz, 1966, p. 6].

It is therefore not without reason that I devote these few lines to this outstanding architect and conservator, who was seen by some as highly controversial already in his time and continues to be so today. His manner of thinking through the prism of the priority of intangible memory over material substance as an interpretation of the monument was ahead of its time and followed the contemporary

ontological status of the monument that shifted the primary focus from the value of heritage, in and of itself, towards its value for social development. “Thus far, heritage (...) was treated as an element of the past that found itself in the present, but which thus required separate treatment. Today, heritage belongs to us all, and access to heritage is a basic human right. Heritage is also not confined to material cultural treasures, but it is also our memory and identity (...). The previous question: How to protect monuments, has taken on the form of: How should monuments be transformed? The goal that was once the protection of historical values is changing into a new one – the use of historical values” [Purchla, 2010, pp. 69–82]. The change in the ontological status also requires a change of principles of heritage conservation [Kadłuczka, 2018].

It is also worth remembering that the aspect of collective, societal memory of past artefacts was strongly accentuated in Poland towards the end of the period of the partitions, when the notion of the monument as a memorial was replaced with the notion of the monument as a “past” structure, placed not only beyond physical existence in reality, but also one that is forgotten. This is a clear message of the significance of memory as a vehicle for intangible values, and which conditions the restoration of tangible values.

This is why I would like to first offer a reflection on tangibility in general. If something is tangible, then we think of it as physically existing. Thus, we immediately fall into the trap of metaphysics – for existence *existentia* and essence *essentia* are its (metaphysics’) fundamental categories. This is where the difficulty begins, one that Plato had already attempted to overcome by assuming that only ideas truly exist – entities that are fully intangible and that exist metaphysically (which in turn was tackled by Aristotle) – extraordinary, unreal, mysterious and unintelligible...

Thus, when discussing the tangibility of architecture, we must remember that we are taking a so-called mental shortcut, focusing not on architecture, but the edifice – the structure comprised of various material substances, with which we can partition space. However, the manner in which the architect performs this partitioning is intangible, it is a record of “thought” and a vehicle of various “meanings and symbols”.

Architecture is therefore not only a material edifice – a form – but is also a transmitter of various messages that are legible through the design of this form. Rudolph Arnheim wrote: “No visual pattern is only itself. It always represents something beyond its own individual existence – which is like saying that all shape is the form of some content” [Arnheim, 2020]. The capacity to represent something using an architectural shape of a hermeneutic form, one that “proclaims”, “interprets” (Greek *hermeneuein* to proclaim, to interpret) denotes the construing of an autonomous language of communication between the sponsor, the artist, the user and

the viewer. But a work of architecture, just as a work of art as seen by Hans-Georg Gadamer, cannot be explicitly “interpreted” in a purely epistemological mode, i.e. using knowledge, logical reasoning, science and the theory of cognition. Yet it can be interpreted, as noted by Maria Niemczuk [Niemczuk, 1990, pp. 99–112]: “The object of interpretation is that which is ambiguous and art is characterised by an inexhaustible ambiguousness, which, following Gadamer once more, reflects the ambiguity of human existence” [Niemczuk, 1999, p. 108].

Here I would like to once again make a reference to the conservation doctrine that assumes the absolute necessity of authentic reconstruction that is compliant with historical truth. Can the modelling of such a reconstruction be possible and is it necessary to maintain the memory of the past? When Gadamer stated that truth has an applicative character, this does not mean he was a proponent of relativism, excluding “the enclosure of every authentic question” [Niemczuk, 1999, p. 111] and explaining that “The essence of the question is based on revealing and maintaining an openness to different possibilities” [Gadamer, 2007].

Architecture is a means of communication about somebody or something. The most extreme example of the primacy of content over form is the Arch of Constantine in Rome, which is solely a communicator, a transmitter and also a symbol of imperial glory. Its façade is built so that its composition and architectural articulation make formal frames that feature plaques and medallions saturated with historical messages about the emperor’s heroic deeds and political accomplishments. The edifice was used for the purpose for which it was built only once and only during the moment when victorious Constantine entered the capital to seize power. The arch of triumph is therefore a peculiar example of symbolic architecture which is a symbol within the public space and also a medium for conveying information and a document of ancient culture, while today it is also a conveyor of memory.

“Human life is closely tied with culture. Culture cannot exist without communication, and communication cannot exist without the ability to symbolise, which humans possess. To symbolise means, in a sense, to represent, and therefore – to mean and to create the space of culture...” [Czerwiński, 2015].

Signs – or marks – thus play an important role not only in the direct transmission of data from the past to the present and further into the future, but also as identifiers of cultural space that mutually orientate the individual and society, not only in topographic and geolocation parameters, but also, and perhaps most importantly, those of cultural identity. Such signs are called landmarks. Before such a mark – an edifice, a material ‘form’ of architecture – is created in space, a certain peculiar process must be initiated, a process that takes place simultaneously in

the conscious and subconscious of the DESIGNER – a process that takes place completely in the **intangible dimension**. This is the moment when the IDEA of architecture is created.

Architecture is created as a material object by partitioning space, which Mieczysław Porębski saw as depicting the surroundings while also being one of the major, but not the only, components of the *iconosphere*. Mieczysław Porębski [Porębski, 1972] perceived space together with all of its divisions, objects-entities or phenomena, both those that naturally exist in nature and those that are the result of millennia of human activity – as material, used to build structures – architectural or urban objects or entire structural systems built in areas of the shaping of the landscape and spatial planning at various levels. It should be added that space defined as such is not single-use material, but is subjected to – as we would call it today – constant recycling; not because of its limited supply, but because of its renewability resulting from a psychological and abstract – intangible – character of space, which takes on tangibility only after the construction of a specific structure, namely the partitioning of this space. This can refer to various philosophical systems wherein space as a material has its initial intangible dimension (Heideggerian hermeneutics) and a secondary dimension which is tangible (Arnheimian structuralism) and which appears via the existence of “things” that populate the space “in which everything finds its place”. Heidegger labelled this as the “spatiality of space”.

It is telling that practically all of the notable definitions of architecture pertain to the intangible: its semantic and symbolic dimension.

GOETHE: “architecture is frozen music...” [[http://www.artandpopularculture.com/Architecture\\_is\\_frozen\\_music](http://www.artandpopularculture.com/Architecture_is_frozen_music)].

LE CORBUSIER: “Architecture is the masterly, correct and magnificent play of masses brought together in light. (...) The business of architecture is to establish emotional relationships by means of raw materials” [Le Corbusier, 1986, p. 29].

LUKÁCS: “Architecture (...) has as its true goal the evoking of responsibility. By referencing such meanings, architecture fulfils its task...”

MIES VAN DER ROHE: “in architecture, less is more...”

This well-known maxim by Mies van der Rohe is mathematically indeterminate and assumes that architecture cannot be confined to the act of building, as it must express its assets and do so in a calculated manner. For a given asset to be recognisable, it is necessary for it to be an accurate representation – to have a meaning.

This meaning can be the specific representation of content by Ledoux and Boullée [Kaufmann, 1952, p. 447], architects of the period of the French Revolution, defined as *architecture parlante* (“speaking” architecture) – which explains its function or identity; this is not original, in and of itself, as this quality can be ascribed to any period. The pylons of Egyptian temples are a treasure trove of information on historical events, the steps of Assyrian or Aztec ziggurats lead to god and the arches of triumph of the Romans, as previously discussed, as occasional, ‘single-use’ structures, are an iconographic source of information about the deeds of the hero to whom they had been dedicated.

Professor Antonio Monestiroli of the University of Architecture in Venice reminds us of the essential dispute between Vitruvius (or rather the principles featured in his architectural decalogue) and the previously mentioned Boullée, who argued that architecture was not an edifice, but a representation. Monestiroli believed that architecture has a quality that sets it apart as an art: it is based on the “will to exalt”, here: the representation, meaning of a building and its elements [Monestiroli, 2009].

My academic colleague, Professor Dariusz Kozłowski, an outstanding contemporary architect, has been searching for the definition of architectural space for twenty years and himself believes that architecture is the art of building “fictitious things that look genuine” [Kozłowski, <https://dziennikpolski24.pl/wyznania-architekta/ar/1678282>]. He is the author (along with Waclaw Stefański and Maria Misiągiewicz) of the famous post-modern monastic complex of the Congregation of the Resurrection, which is one of the first works of contemporary Polish architecture to be featured in the Phaidon Encyclopaedia.

This architecture, which is full of symbolic meaning, “is a multi-threaded transformation of ideas about places of worship that are deeply rooted in culture. Gates, courtyards, portals, temples or towers do not always play their traditionally assigned roles. But just as in historical complexes, they co-create an atmosphere of mysticism and spiritual mystery. In the physical dimension, one is led towards an understanding of the Absolute via four gates: Initiation, Knowledge, Hope and Faith” [Kozłowski, <https://dziennikpolski24.pl/wyznania-architekta/ar/1678282>].

In an interview, Dariusz Kozłowski noted that architectural form, as a specific entity within space, is created as a result of searching for a pretext for building it, and the design, necessary for construction, understood as an idea which “is made from start to finish in the mind, sometimes in some mysterious, incompletely understood form” [Pięciak, Kozłowski, 2012, <https://www.bta-czasopismo.pl/wp-content/uploads/2019/05/1882.pdf>] – there is nothing more intangible...

When discussing meanings and symbols in historical space, the discourse features the distinctive value of the “settled” place in space called *genius loci*.

I shall not engage in discussing this subject at length here, but merely note it as belonging to the intangible “package” of meanings and symbols in architecture and urban planning while also maintaining great care in defining it in light of Christian Norberg-Schulz’s doubts as to the possibility of synthesising these meanings and values. In other words, the fundamental question asked by Bartłomiej Gutowski: “Does this genius loci, which we can search for in space, exist?” [Gutowski, 2009]. Finally, it is discussed in the humility displayed by Daniel Libeskind who cautioned that “to search for the genius loci is to touch the absolute” [Królikowski, 2011].

This is why I believe that heritage conservation is not only the ‘magic’ of the fetish of material substance, but also, and perhaps most importantly, understanding the intangible meanings and symbols borne by architecture that has conveyed the message of its universal and humanist significance across the centuries, just as understood by Thomas Aquinas: where existence takes place by constant creation: *conservatio est continua creatio*.

This was also understood perfectly by Jan Zachwatowicz, who in 1945 stood before the problem of *creatio ex nihilo* – of the death of national cultural heritage, proposing a departure from then-established conservation doctrine: “(...) Entire pages of our history, written with the stone syllables of architecture, were deliberately torn. We cannot accept this. The feeling of responsibility to future generations requires the reconstruction of what has been destroyed, a complete reconstruction, aware of the tragedy of its falsehood as understood in conservation (...) The matter of monuments is a fundamental social issue – an issue of national culture. We cannot apply unilaterally abstract theory to them, we must account for the needs of today...” Zachwatowicz was familiar with the behaviourism of architecture and noted just how great of an impact it has on human behaviours, reactions and attitudes – on cultural identity [Zachwatowicz, 1946].

After many years, this behaviourism was confirmed by the archaeological experiment of Carnuntum (an ancient preserve in Austria) via the construction of a complex of Roman thermal baths not on the basis of objective sources, but subjective sources, and which is a falsehood in the eyes of conservation. Yet, it is also an excellent vehicle of memory and knowledge of the past, generally seen by society as an ‘authentic’ historical structure. The latest (2019) spectacular and multi-aspect example is the decision of Frankfurt am Main’s municipal authorities to build a *New Old Town* in place of demolished modernist buildings from the 1970s and 80s, with no small deal of pressure from the local population.

Here we touch on the separate issue of violating the principle of authenticity of a monument and replacing dematerialised substance with new materialised substance – whose authenticity depends on the genuineness of architectural form [The Nara Document on Authenticity, 1994], and a suggestive form enhances past achievements in human memory.

### 3. CONCLUSIONS

The possibility of preserving a specific quantum of knowledge about tangible and intangible cultural heritage in individual and collective memory is the most effective method of conserving it. The destruction of a monument's material structure can mean its permanent elimination from existential space in the first stage, while in the second, it is erased from the register of reality (of artefacts/phenomena) and subjected to consciousness-based annihilation, which is the erasure of it from memory. The stored quantum of knowledge about heritage allows us to recreate it, reconstruct it and to continue to remember it. This is not an area for doctrinal discussion on architectural and conservation-related reconstruction and its degree of authenticity; doctrine is a subjectively adopted set of views, statements and assumptions, a proposed system of action and thinking, adopted methods and solutions. Instead, we speak here of an objective study of memory as the subject of interest of cultural anthropology, in terms of the role of memory in cognition [Kaniowska, 2003]. Katarzyna Kaniowska, while explaining what memory is and referring to the interdisciplinary psychological, physiological (neurophysiological), biochemical and biophysical knowledge, noted that “anthropology is not interested in the mere fact of possessing memory and the capacity to use it by humans, but in individual and cultural consequences of memory, the individual and cultural testament of its presence in how people think” [Kaniowska, 2003, p. 57].

For this discussion, it is essential to identify memory as an object of knowledge; one that is collected both individually “when memory brings back the reality of the past – an experience is translated into a memory” – and accumulated collectively, when “Memory is knowledge of the past and this means that it shapes historical awareness” [Kaniowska, 2003, p. 60]. The combination of the intangible individual memory and collective memory is currently a sine qua non condition for the effective conservation of cultural heritage, perhaps even more effective than the most authentic, material substance of an artefact of the past. This is because the culture of the 21<sup>st</sup> century is distinguished by an exceptional paradox [Majchrzak, <http://www.miejscapamieci.umk.pl/wp-content/Materialy/Od%20miejsc%20pami%C4%99ci%20narodowej.pdf>, p.1], which based on the fact that we “live in soci-

eties which are largely suffering from amnesia and yet develop and cultivate various passions and obsessions associated with memory” [Kapralski, 2010, p. 20].

The French historian and philosopher Pierre Nora explained this paradox of contemporaneity, which began with the negation of all past by the futurists and their calls to destroy it, and “we have felt called upon to accumulate fragments, reports, documents, images, and speeches – any tangible sign of what was – as if the expanding dossier might someday be subpoenaed as evidence before who knows what tribunal of history. (...) The imperative of the age is not only to keep everything, to preserve every sign (even when we are not quite sure what it is we are remembering), but also to fill archives” [Nora, 2009, pp.7–8].

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## CHAPTER II

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### **Family cultural heritage and the subjective right to participate in local government as foundations underlying the position of an individual in contemporary society. Part I**

#### **SUMMARY**

The first part of the chapter deals with the systemic characterization of the rank of family cultural heritage in the context of broadly understood cultural heritage.

**KEY WORDS:** family cultural heritage, cultural heritage, monuments, family historiography, local government

#### **1. INTRODUCTION**

Family history plays a very important role in the current state of the society's cultural identity. It holds true both in regards to non-tangible and tangible family cultural heritage. It is increasingly more common that people, on the one hand, perceive the social and cultural dimension of their family historiography in the framework of the non-tangible and tangible and cultural heritage, but also its personal and individual dimension, with its subtly expressive and important significance for the individual persons and their loved ones. Undoubtedly, in the 21<sup>st</sup> century family cultural heritage, regardless of the social background, should be seen through the prism of the *valorem affectionis* convention (sentimental, emotional value) in regards to these individuals whose tangible and non-tangible values refer to in any relevant dimension. Family cultural heritage "(...) remains in a positive and stimulating correlation with other kinds of cultural heritage, e.g. local heritage" [Dobosz, 2019a, p. 18]. I am convinced that we can speak about a growing popularity of research into family historiography. As a contribution, I also presented my position in an article titled: "Popularization of the need to research the history of one's own family as a symptom of active participation in genealogical cultural heritage. Case study – selected aspects of own family research dedicated to Irena Dobosz (1940–2018) – guardian and propagator of family remembrance". There

I wrote the following: “Contemporary families undertake the research into the history of their own families increasingly more frequently, although still not on any impressive scale”. This type of activity is, on the one hand, a result of the need observed among many people to search for their family roots, and on the other hand, of the breaking of a certain stereotype stating that family genealogy refers only to royal, aristocratic and noble families and its aim is to prove the many centuries of existence of a given family and execution of a genealogical tree in a form of a drawing or family graph. Therefore, as some people think, it is not worth researching one’s own family history” [Dobosz, 2019b, p. 20].

## 2. A NOTION OF A FAMILY AND ANCESTRAL LINE VERSUS A DEFINITION OF FAMILIAL AND ANCESTRAL CULTURAL HERITAGE

Familial and ancestral cultural heritage is connected with notions of a family and ancestral lineage. We can refer to a *sensu stricto* family and *sensu largo* family. A *sensu stricte* family consists of parents and children. A *sensu largo* family includes also relatives of affinity and consanguinity, who create separate families. This broader approach to a family places a group of families within their ancestral lineage, being a compact social group built on the basis of *sanguinem necessitudines*, i.e. bonds of blood constituting a family community based on a criterion of blood and consisting of families deriving their lineage from a concrete shared ancestor. Contemporarily, we may assume that family cultural heritage is a complex of non-tangible attributes (values) and tangible objects which are set in time and space and connected with a history of a specific family and which are cultivated in the tradition and reality of a given contemporary family. Thereby, this heritage constitutes a factor of a vivid intra-family impact, regardless of the family’s social background. The ancestral cultural heritage, in turn, is a complex of non-tangible attributes (values) and tangible objects set in time and space which are connected with a history of a specific ancestral lineage and which are a subject of cultivation in a tradition and contemporary reality of a given family group. Thereby, it constitutes a factor of vivid intra-family group impact, regardless of the social background of the family groups.

Contemporarily we may classify family groups based on various criteria of social sense of identity. This includes, for example, family lines of low or high nobility, aristocracy, duke families, gentry, townfolk, tradesmen, craftsmen, working class, farmers or peasantry. In the past, family lines defined as “of noble birth” were distinguished by their coat-of-arms which was used to define a community referring to single persons and entire families who were using their specific coat-of arms.

From the perspective of today's knowledge of the history of family lines we can also distinguish mixed family lines where social background and professions were strongly mixed. A glance at the professional placements of noble families shows that it was subject to significant modifications.

### 3. TRADITION AND FAMILY – REFERENCE IN MASS CULTURE

In the times of interdisciplinary nature of social sciences one may refer to film studies to find the mass culture exemplification of the values presented in this article. An understanding of the notion of tradition was very well presented in a Polish comedy directed by Stanisław Bareja and titled "Miś" ["Miś" ("Teddy Bear"), 1980]. It is presented in a narration which reappears for several times in different scenes of the film, starting with an unambiguously comic motif and ending with a "serious" message of a young coal-trader (played by Marek Siudym) who intended to name his daughter Tradition. In a conversation with his colleagues he showed them a newspaper. Stanisław Paluch, another coal-trader, (played by Stanisław Tym) read a paragraph, appropriately stressing particular phrases: "Following a ceremony in a wedding hall... the newlyweds went to the council in their workplace, where they received bouquets of wedding flowers. All were touched with the fact that they witnessed the birth of new, lay tradition" [„Miś" ("Teddy Bear"), 1980].

In the final act of the film *Tłoczyński*, an elderly coal-trader (played by Stefan Śródka) made the following statement; not only did he strongly oppose against naming a child Tradition, but he also explained the reasons for his position, finding that: "She cannot be called: **TRADITION**. You are asking me why? Well, because you cannot name anything a tradition. Neither can you order it with a special resolution, nor establish it. Who thinks differently, shines like a blown-out candle in the sunny outdoors! Tradition is an oak-tree which had been growing for thousands of years. Let nobody match a small sprout with an oak-tree! Tradition of our history is a wall of a stronghold. This is a Christmas carol, a Christmas Eve super, this is singing of the country folk, this is our father's speech, this is our history which cannot be changed. And what is being built around us is being created anew; this is our everyday reality in which we are living" ["Miś" ("Teddy Bear"), 1980].

However, in a song titled "Family, ah, family", which was performed by Jeremi Przybora and Jerzy Wasowski of *Kabaret Starszych Panów* [the Elderly Gentlemen's Cabaret] in a poetic, lyrical and satirical, yet also axiological manner they drew the attention to the potential, magnetism and power of a family with such words:

“Family, family, family, ah, family.  
 You do not enjoy family when it is there,  
 But when you don’t have it  
 You’re lonely like a dog.

A guy had a villa with a garden  
 He had a garage and a car,  
 So everybody who did not have them,  
 Immediately desired to have them, along with  
 a telephone made of plastic, a record-player, and a coat of tails...  
 So what could the guy lack?

Family, family...

He got five years of jail as an effect  
 Of this villa with a garden.  
 They pass by quietly  
 In his spic and span cell.  
 Reading, walking, quite tasty food.  
 So what could the guy lack?

Family, family...” [Przybora, Wasowski, 1962].

#### 4. GENEALOGY AND FAMILY HISTORIOGRAPHY

A notion of genealogy, derived from the Greek words *γενεά*, *genos* – “family line” and *λόγος*, *logos* i.e. „word”, „knowledge” is defined on several levels. Firstly, it is seen as “history of a family line, written or preserved in oral tradition, taking into consideration its origin, a sequence of generations and the bonds of kinship among its members” [*Słownik Języka Polskiego (Dictionary of the Polish Language)*, 1960, p. 1087]. In another approach it is: “an auxiliary science to history dealing with analysis of the origin, family relationships and history of families” [*Słownik Języka Polskiego (Dictionary of the Polish Language)*, 1960, p. 1087]. Genealogy also means: “an origin, a beginning of something” [*Słownik Języka Polskiego (Dictionary of the Polish Language)*, 1960, p. 1087].

Genealogy is unjustly associated with the professional work solely aimed at a preparation of a genealogical tree and evidence of a noble birth or background of a socially ennobling character. Such attitude places a certain barrier on the actions of a genealogical nature. It may also cause disappointment with the results of the professional genealogical research. An alternative notion eliminating the mental barrier and fears of showing the background in the so-called lower social classes

or discrediting genealogical research results from a recent period is a notion of an amateur family historiography which uses contemporary tools of documentation and presentation of family history. However, once we adopt some distance and humility to our own family history we can avoid the potential unreliability of some individual genealogists or genealogical offices whose activity may make a client happy with their “coat-of-arms history” but which do not have anything to do with reliability and honesty. This phenomenon is described by P. Dudziński in the following way: “The coat-of-arms is indeed connected with a certain nostalgia. Many people browse through armorials in hope of finding their surname, sometimes falling prey to various kinds of “offices” and creating fiction of possessing a coat-of-arms, or searching for false ancestors, or bestowing new coats-of-arms on people” [Dudziński, 1997, p. 243].

##### **5. AN INDIVIDUAL – A PERSON IN SIX MAIN PLANES OF INDIVIDUAL SELF-REALIZATION AND PERSONAL DEVELOPMENT VERSUS FAMILY HISTORIOGRAPHY**

A human being (an individual) may be situated in six main planes of individual self-realization and personal development. The first plane which can be called “a lone sailor” refers to an alienated person performing all social functions by him/herself. The second plane is the family, which in the opinion of the author of this text is socially fundamental. The third plane is local government, and especially its basic unit. The fourth plane is the nation without a state and the nation within the entity of an existing state. The fifth plane is a supranational structure, e.g. the European Union. And the last, sixth plane is the global structure.

All of these planes mutually intermingle to some extent. Either in an institutionalized or non-institutional manner. Helvetia is an example of such reciprocities among some of the listed planes. According to P. Dudziński, who researches Switzerland “(...) heraldry is present at every corner, either in the coats-of-arms used by the overwhelming majority of families regardless of their background – peasantry, tradesmen, craftsmen or nobility, whether the flags wave in front of companies, private homes, which are adorned by coats-of-arms of a commune, canton, company or family (the rules of using these signs and other symbols related to them is specified by the governmental document of 1957). Each Swiss person knows the coats-of-arms of their cantons, is able to recognize the emblems of towns and communes of befriended families that are close to his/her heart. Knowledge of those signs is taken into account in school syllabuses. And in this way a cult of family and the family line, becoming strong in a specifically placed regional homeland,

and along with it in a wide notion of one federalized homeland, becomes a seed for love of tradition and native land, and all of this is happening in one of the most democratic political systems in the world” [Dudziński, 1997, p. 244].

## **6. PROPAGATING THE AWARENESS OF FAMILY (ANCESTRAL) HISTORY DURING THE SECOND REPUBLIC OF POLAND, AN ATTITUDE OF A SOCIALIST (COMMUNIST) STATE IN POLAND AND AN ATTITUDE OF THE CONTEMPORARY POLISH STATE TO GENEALOGICAL RESEARCH AND FAMILY HISTORIOGRAPHY**

During the Second Republic of Poland the culture of national, state and family awareness was popularized. A presentation of this issue in a broader perspective is yet beyond the scope of this paper. The words of Władysław Pulnarowicz, a senator during the Second Polish Republic are yet expressively valid. He advocated “an obligation to become familiar with the life and work of our ancestors” [Pulnarowicz, 1937, p. 5]. He saw the foundation of the Polish society in family awareness, which he expressed while writing: “(...) the old history of both individual families as well as of the entire nation is the foundation which the contemporary society is based on” [Pulnarowicz, 1937, p. 5]. Recognizing the cognitive function of the family (ancestral) historical knowledge he saw it having not only the cognitive but also a preventive element. Thus, he stated: “(...) the history of past generations, history is the mistress of life we can learn a lot from. Getting to know our ancestors’ lives we can avoid many errors which they had committed or we can follow many things which turned out to be good” [Pulnarowicz, 1937, p. 5]. In another place W. Pulnarowicz wrote: “(...) The forefathers should be honoured not only while they are alive, but also their memory should be respected. And we deem also our ancestors, grandfathers and great-grandfathers as forefathers, constituting the basis of our family today. One should follow their good deeds and avoid the bad ones. This is the reason why we have to know the past. To know the history of our country, of our native village and the history of our family” [Pulnarowicz, 1937, p. 5 and the following ones].

An attitude of the socialist (communist) state to genealogy and family historiography had a defensive and ambivalent dimension in Poland. In regards to genealogy and family historiography the People’s Republic of Poland adopted an ideological and depreciating approach, significantly narrowing down any activity in this respect. The attitude of today’s Polish state is undergoing a certain metamorphosis which takes the path from institutional indifference to a relative organizational creativity. Examples of the latter include support from local government

to social archives projects, collecting and digitalizing family memorabilia and collecting testimonies from people living in localities. These are also museological projects emphasizing the social rank, for example, of traditional family albums. As a proverb goes “one swallow does not make a summer”, but certainly this is a good beginning.

Regardless of the expectations towards the system of public education which should awaken the students’ interest in their family history, a broader perspective should also include support for amateur family historiography. In the opinion of the author of this text: “The findings of family historiography of each historic period are valuable, without the need to list the documented traces of a family in very distant centuries” [Dobosz, 2019b, p. 20].

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## Praxeological dimension of the *ex post immediate* assessment of the efficiency of cultural projects' realization

### SUMMARY

Both praxeology as well as management science are regarded as practical sciences, which are a part of a group of sciences about action which are referred to as ergological (the Greek word *ergon* means work as well as action) [Zieleniewski, 1981, p. 58]. Comparing praxeology and management science one may notice their mutual relationship. Praxeology deals with the effectiveness of each action undertaken by people, while the theory of management focuses on an issue of effectiveness of human teams, acting in organizations. Management science initially focused solely on the scientific approach to problems of management in a scope of manufacturing processes, however now it encompasses all areas, including the sphere connected with management in culture. In the scope of management science, the project management area was singled out, which initially focused on planning, implementation and controlling of construction and engineering projects, however in the 21<sup>st</sup> century it began to employ scientific approach to manage cultural, educational and sport projects. Admittedly, the expansion of the subject of analysis beyond the manufacturing area enticed scientists and practitioners of management to search and create new approaches and methods which could be adequate to indicated new research areas, e.g. culture.

The goal of this chapter is to raise awareness of the need to manage cultural projects, also with consideration to their specifics by using appropriate methods of *ex post immediate* assessment of efficiency of their implementation.

**KEY WORDS:** praxeology, efficiency, project, project management, cultural project, *ex post immediate* assessment

### 1. INTRODUCTION

Both praxeology as well as management science are regarded as practical sciences which belong to the group of sciences about action, and are referred to as ergological (the Greek word *ergon* means work as well as action) [Zieleniewski, 1981, p. 58]. Comparing praxeology and management science one may notice their mutual relationship. Praxeology deals with the effectiveness of each action undertaken by people, while the theory of management focuses on the issue of effectiveness of human

teams, acting in organizations. The subject of analysis is cooperation in the scope of human teams, performing tasks in an organization effectively. Praxeology indicates characteristics of efficiency of all actions regardless of the form of their organization. [Kurnal, 1969]. Therefore, one may single out routine actions which are characterized by the repetitiveness of the effectiveness of their implementation according to an adopted scheme of proceeding and non-routine actions which go beyond adopted procedures and implemented processes. Non-routine actions are the projects, i.e. unrepeatable, complex enterprises, whose significance also grows in the scope of culture. In culture, both hard and soft projects are implemented. Hard projects refer to engineering, construction and technical projects, while soft projects are connected with investments in human development. As such they gain special significance in the context of forming cultural outputs, both tangible and non-tangible, in the perspective of civilizational development of mankind. The way of understanding the role of cultural projects is aligned with the broadly defined culture as “complete material and spiritual output of mankind gathered, recorded and enriched during its history” [*Słownik języka polskiego (Polish language dictionary)*, 1978, p. 1083]. However, the output of mankind in the sphere of culture refers to both the tangible and non-tangible sphere and is a result of human actions, which throughout history have determined the significance and meaning of the world.

The goal of this chapter is to raise awareness of the need to manage cultural projects, also with consideration to their specifics of using appropriate methods of *ex post immediate* assessment of the efficiency of their implementation.

## 2. CULTURE AND PROJECT MANAGEMENT

The notion of culture is analysed by various academic fields and disciplines. The broad interpretative scope of its definition arises from the interdisciplinary explanation of its essence in various contexts. Furthermore, this word culture is used not only by the academics, but also functions in colloquial language. Contemporarily – in a broad scientific approach – culture is of descriptive character and aims at the objectivization of examined phenomena. This assumed objectivism allows for the differentiation between the use of this word in the scientific and non-scientific language. In regards to the latter its role is that of assessment and evaluation [Szczepański, 1970, p. 71].

Historical perspective reveals a certain evolution of the notion. For the first time culture was used by Cicero in reference to cultivating soil as well as in a metaphorical approach in reference to philosophy and art – *cultura animae* – culture of

soul and mind [Rigotti, 1996]. Since the 20<sup>th</sup> century the notion of culture has been treated as a universal category, a tangible and non-tangible output with a historic, political, economic and social dimension. It should be emphasized that the interpretational context of the notion of culture depends on the scientific discipline. In order to show the relations between culture and management science it is worth referring to D. Throsby who pointed to the similarity between both disciplines in regards to the category of attributes of action, such as requirement of creativity, creation of symbolic meanings, generating new messages which are a form of intellectual property [Throsby, 2010, p. 20; Biggs, Smith, 2003, p. 47]. One of the consequences of linking culture and management science is the singling out the scope of culture management which took place in the 1990s when culture started being perceived in the institutional sense as well as undertaken activities aimed at the achievement of expected results in an efficient way. Such activities, undertaken in the realm of culture, are called projects. The designates of cultural heritage are of unique character, similarly to projects, therefore it seems appropriate to apply scientific approach to manage projects in culture from the perspective of efficiency of activities. Hence the question as what is a project? The notion of a project varies depending on the field of research – in management science a project is defined as a “temporary enterprise undertaken to create a unique product or service” [Drexler, PMI, 1983, p. 5]. This short definition contains two significant characteristics of a project, which are adequate to cultural projects, namely [A Guide to the Project Management Body of Knowledge, 2013, p. 6; Burke, 1999, p. 12; Moris, 1997, p. 9]:

- Temporariness which refers to the period of project implementation, which varies as to the time of its duration as well as to the specification of the date of commencement and scheduled date of finishing its implementation.
- Uniqueness which is connected with the result of the project as a unique and specific activity on the account on certain attributes.

Projects implemented in the realm of culture vary due to their scope, magnitude, results or innovativeness. In the scope of cultural projects hard projects are implemented, including technical and related to architecture, as well as soft ones (connected with investments in social development), which area artistic, educational and social projects as well as those focused on heritage. Such high differentiation among cultural projects requires specialist approaches to their planning, implementation, completion and assessment of efficiency of their implementation at particular stages. Management of cultural projects is connected with applying knowledge, skills, and methods – in order to meet clients' expectations.

### 3. PRAXEOLOGICAL MEASURES OF ASSESSMENT OF CULTURAL PROJECTS

The term praxeology derives from the Greek words *praxis* what means an activity, action and *logos*, which means science. Therefore, praxeology is a science dealing with actions which has the qualities of a “good job”, as defined by T. Kotarbiński in his work *Treatise on a good job* [Kotarbiński, 1973].

For some researches praxeology is a normative science, while for others it is a descriptive one. However, if we assume that each action is focused on facilitation, gradual improvement, we also assume that it is subject to assessment by comparison of the achieved state of improvement (the desired state) with current (updated) status. Linking praxeology with practical sciences requires not only a description of actions, but also their efficiency assessment. The relationship between praxeology with the sphere of management as well as culture may be seen in the scope of efficiency assessment of actions. In praxeology efficiency is the general measure for assessment of actions, which also contains other measures, i.e. effectiveness, economicality or beneficiality. This means that to be considered efficient an action – first and foremost – needs to achieve its goal and meet the criteria of efficiency, which is subject to gradation. Based on the analysis of subject literature in the area of praxeology a notion of “efficiency” can be viewed according to the following approach: synthetical, universal, general, factual and methodological. On the account of the defined subject of the analysis it was decided that efficiency would be understood in the synthetic sense, which in practice means possession of the maximum number of qualities of a good job, and the highest dimension possible [Kotarbiński, 1973, p. 117; Kozień, 2017, pp. 25–32; Pszczołowski, 1962, p. 27].

The issue of praxeological or utilitarian assessments [Tobor, 1984; Tobor, 1986] is also relevant from the perspective of legal theory, including the theory of directives, norms and language [Ziemiński, 1974; Ziemiński, 1983; Ziemiński, 1995; Stevenson, 1938; Stevenson, 1967].

Praxeological assessment of project implementation efficiency is often reduced to the directive: fast and cheaply. Such an approach to project assessment based solely on the account of time and cost efficiency is not appropriate since the added value of the project, expressed for example in its quality, is omitted. Therefore, given the specifics of cultural projects as well as the approach in a synthetic and multi-criterial sense, it is justified to adopt an expanded catalogue of praxeological measures, which include: the goal of the project, its time, cost, quality as well as strategic and social effects. The goal of the project means an achievement of the “project triangle” parameters pursuant to the assumed level of meeting client’s

requirements [Frese, 1984, p. 463; Kerzner, 2003, p. 23]. The parameters of a “project triangle” include the time taken into consideration in a project schedule, cost specified in the project budget, as well as quality defined by a set of characteristics, by a subject defining planned quality [Kozień, 2014, pp. 15–22; Pftzing, Rohde, 2001, p. 12; Preissner, 2003, p. 17]. The strategic effects achieved in a project refer to the factual assessment of the scope of their influence. However, the social effects of a project are focused on development, integration as well as safety.

#### **4. APPLICATION OF THE EXPANDED METHOD FOR THE *EX POST IMMEDIATE* ASSESSMENT OF CULTURAL PROJECTS IMPLEMENTATION.**

Assessment (Latin: *aestimatio*), which means assigning value or estimate, evaluation of something, is of valuating nature in reference to norms, adopted and valid standards, as well as model systems of assessments [Trocki, 2012, p. 19]. T. Pszczołowski is correct in pointing to the fact that *ex definitione* assessment may be positive or negative, but it cannot be neutral [Pszczołowski, 1978, p. 141; Gasparski, Pszczołowski, 1983, p. 78]. In the theory and practice of management, all actions, also those undertaken in the form of projects and their products, are subject to assessment according to various criteria. It is worth emphasizing that initially in the scope of management, the concepts which were most frequently used for project assessment were focused on goals and economic benefits [Merritt, 2007, p. 26]. Such approach was justified by the implementation of only “hard” projects, for example construction and engineering projects. Currently, the implementation of social, educational, and cultural projects, i.e. those that are generally defined in subject literature as “soft” projects enforces the modification of the current methods of their assessment. In addition, it is important at what moment an assessment of project implementation efficiency is made. From the perspective of phases of project implementation the following moments of their efficiency assessment may be pointed out: for an initial phase of project implementation the *ex ante* assessment is appropriate, in the phase of planning and implementation – the ongoing assessment, whereas in a phase of project completion – the *ex-post immediate* assessment.

On the account of a formed goal the following scheme of research procedure was adopted:

- Definition of a goal and subject for analysis
- Gathering information
- Praxeological assessment of cultural projects using an expanded method
- Conclusions and recommendations

The goal is to perform the *ex-post immediate* assessment of project implementation efficiency. The subject of examination are cultural projects, both hard and soft. Information on projects was collected on the basis of available documents and conducted interviews with managers or members of project teams.

The *ex-post immediate* assessment of cultural projects implementation efficiency was made using the expanded method<sup>1</sup>. Expanded method is a method serving for *ex-post immediate* assessment of project implementation efficiency conducted immediately after the completion of the project, if it is of quantitative nature. A project is assessed according to six highlighted criteria, i.e. goal, time, cost, quality, strategic effects and social effects ( $i = 1, \dots, 6$ ), with arbitrarily assumed weight values  $\alpha_i$ , which must meet the condition specified in formula (1). The following weight values were adopted: 0.20 – goal, 0.15 – time, 0.15 – cost, 0.20 – quality, 0.15 – strategic effects, 0.15 – social effects.

$$\alpha_1 + \alpha_2 + \alpha_3 + \alpha_4 + \alpha_5 + \alpha_6 = 1 \quad (1)$$

Then, the total efficiency coefficient  $s$  is determined according to formula (2) based on the values of the partial efficiency coefficients ( $s_1$ – $s_6$ )

$$s = s_1\alpha_1 + s_2\alpha_2 + s_3\alpha_3 + s_4\alpha_4 + s_5\alpha_5 + s_6\alpha_6 \quad (2)$$

Partial efficiency for the goal  $s_1$  ( $s_1 = 1$  – the goal was achieved,  $s_1 = 0.5$  – the goal was partially achieved,  $s_1 = 0$  – the goal was not achieved), time  $s_2$  ( $s_2 = 1.2$  – implementation below the planned time,  $s_2 = 1$  – implementation in the planned time,  $s_2 = 0.6$  – slight time overrun (less than 20%),  $s_2 = 0.2$  – large time overrun (between 20% and 50%),  $s_2 = 0$  – unacceptable time overrun (over 50%), cost  $s_3$  determined analogously to time, quality  $s_4$  ( $s_4 = 1$  – planned quality achieved,  $s_4 = 0.7$  – average planned quality,  $s_4 = 0.3$  – low planned quality,  $s_4 = 0$  – no planned quality), strategic effects  $s_5$  ( $s_5 = 1$  – strategic effects were achieved by multilateral international reach,  $s_5 = 0.8$  – bilateral international,  $s_5 = 0.6$  – national,  $s_5 = 0.4$  – regional,  $s_5 = 0.2$  – local,  $s_5 = 0$  – no strategic benefits were achieved, social effects  $s_6$  being the sum of development-oriented effects ( $s_{61}$ ), integration ( $s_{62}$ ), security ( $s_{63}$ ), and basic social effects ( $s_{64}$ )

$$s_6 = s_{61} + s_{62} + s_{63} + s_{64} \quad (3)$$

<sup>1</sup> Expanded method serving for the *ex-post immediate* assessment of cultural projects implementation efficiency was discussed to a larger extent in a book written by E. Kozień [Kozień, 2019].

On the other hand, the project evaluation scale is five-step: A – extremely efficient project implementation ( $s > g_4$ ), B – efficient project implementation ( $g_3 < s \leq g_4$ ), C – moderately efficient project implementation ( $g_2 < s \leq g_3$ ), D – little efficient project implementation ( $g_1 < s \leq g_2$ ), E – defective project implementation ( $s \leq g_1$ ). The following limit values were adopted ( $g_1 = 0.28$ ,  $g_2 = 0.48$ ,  $g_3 = 0.68$ ,  $g_4 = 0.88$ ). The scale of project assessment is based on five grades: A – exceptionally efficient project implementation, B – efficient project implementation, C – average efficiency of project implementation, D – low efficiency of project implementation, E – inefficient project implementation [Kozień, 2019, p. 107–112].

Assessments apply to cultural projects, both hard and soft ones. Cultural projects can also include entertainment art<sup>2</sup> as well as preservation and cultivation of national heritage. Projects implemented in the area of culture are both one-time events as well as cyclical events with their unique character. Such are for example the International Chopin Competition or Jan Kiepura Festival. Additionally, the definite goals of cultural projects are related to the level of social development and education in the area of culture. The duration of the preparation of cyclical projects is set by the time interval (which can take several years or one year), whereas the implementation and completion of one-time projects is determined by the set date of the event. The budget is defined as well, while the project structure varies depending on who co-finances the project. The quality of cultural projects is assessed based on the opinion of critics. The strategic effects are assessed with the view of the outreach of a cultural event. This outreach may be local, regional, national, international, bilateral or multilateral. The important criterion of cultural projects assessment is their value in the cultural and social dimension connected with the formation of the identity and value system, which means in the formation of the society. For the assessment of social effects in the expanded method it is helpful to develop a checklist in which the general criteria of social effects focused on development and integration are more precise.

The subject of the analysis were cultural projects diversified in terms of size, degree of novelty and originality, as well as orientation (process and object-oriented projects). Twelve cultural projects which have been completed and about which the necessary information was obtained, which enabled the achievement of the set research goal, were assessed.

In the analysis hard cultural projects (1–4) were taken into consideration as well as soft projects (5–12)

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2 Within the meaning of the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, executed in Paris on 17 October 2003 [Journal of Laws, 2011, No. 172, item 1018].



- 1 – Construction of Galicyjskie Town in Nowy Sącz
- 2 – Construction of the Kraków Opera
- 3 – Construction of entertainment and sports hall – Kraków Arena
- 4 – Acoustic modernization of a musical stage
- 5 – Following the traces of European identity of Kraków
- 6 – International Musical Festival “Chopin and his Europe”
- 7 – Jan Kiepura Festival
- 8 – International French Song Festival for Edith Piaf Grand Prix
- 9 – First Art Festival in Nowa Huta
- 10 – Off Plus Camera Festival 2012
- 11 – Kraków Dance Festival (“Tańcem Malowany – Painted with Dance”)
- 12 – Gustav Mahler Festival

PROJECTS	GOAL	TIME	COST	QUALITY	STRATEGIC EFFECTS	SOCIAL EFFECTS	S	GRADE
1.	1.0	1.0	1.0	1.0	0.2	0.50	0.81	B
2.	1.0	0.6	0.2	0.3	0.2	0.25	0.39	D
3.	1.0	0.6	0.2	1.0	0.2	0.25	0.53	C
4.	1.0	0.6	0.6	1.0	0.2	0.50	0.65	C
5.	1.0	1.0	1.0	1.0	0.2	0.25	0.77	B
6.	1.0	1.0	1.0	1.0	0.8	0.50	0.90	A
7.	1.0	1.0	0.6	1.0	0.2	0.50	0.73	B
8.	1.0	1.0	1.0	1.0	0.8	0.50	0.90	A
9.	1.0	1.0	1.0	1.0	0.2	0.50	0.81	B
10.	1.0	1.0	1.0	1.0	0.2	0.50	0.81	B
11.	1.0	1.0	1.0	1.0	0.2	0.50	0.81	B
12.	1.0	1.0	0.6	1.0	0.2	0.50	0.73	B

Table 1. *Ex post immediate* assessment of cultural projects implementation efficiency with an expanded method. Author's own sources.

Overall, the *ex post immediate* assessment of cultural projects implementation efficiency using an expanded method proved positive. None of the projects analyzed was assessed as inefficiently implemented. Out of the twelve implemented projects two were assessed as implemented with exceptional efficiency (A). It is worth emphasizing that both of these projects were international projects.

Seven projects were assessed as efficiently implemented (B). Two projects were implemented with an average efficiency (C) and one of them with low efficiency (D). It should be emphasized that assessment of medium and low efficiency in implementation of projects refers to a group of four cultural projects included in hard projects (construction) group in which there were problems with keeping the planned time schedule as well as costs, and in one of them also the planned quality. A special significance in the assessment of soft cultural projects is attached to strategic effects denoting the influence of the dimension of culture and the strategic effects, which are of significant value for civilizational development of a society in the area of culture.

The graphic presentation of the results of *ex post immediate* assessment of cultural projects implementation is shown in Figure 1. Particular circles limit the highlighted areas of project implementation efficiency: inefficient, low efficiency, medium efficiency, efficient and high efficiency. The numbers on the circumference of the graph are linked with the numbers of particular projects tallied in Table 1.

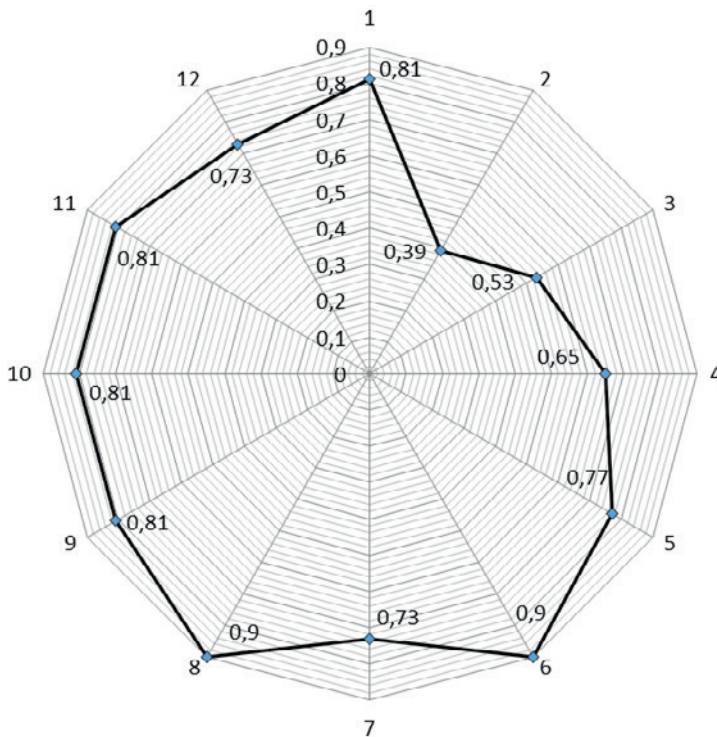


Fig 1. Graphic visualization of results of *ex post immediate* assessment of cultural projects implementation efficiency. Author's own sources.

## 5. CONCLUSIONS

Culture is of fundamental significance in a context of formation and development of each human being as well as of societies. Works of culture, both tangible and non-tangible, connect the past, present and future, outliving their creators. John Paul II spoke about the authentic culture which covers the material, spiritual, cognitive, moral, emotional, individual and transcendent development [Jan Paweł II, 1988, p. 152]. Anthropological approach to culture recognizes the significance of human existence and activity. The latter especially can be found in a broader discourse of different fields. Culture is a human activity, whereas epistemological bases for human activity are a subject of humanities, economic and technical sciences, in the scope of which scientific discourse still lasts. Praxeology derived from philosophy of practicality and applied in the theory and practice of management has made a significant contribution to the development of the general theory of human activity. Management science and praxeology are connected by the ergological analysis of all actual intentional actions in practice and their assessment on account of efficiency. In management, the unique actions include projects whose characteristic is efficient implementation assessed *ex ante* in the category of a gradable goal, and *ex post* in regards to efficiency. It should be emphasized that the management science is a young scientific discipline which has been developing dynamically, creating new areas for research in connection with other disciplines, i.e. culture management. Linking culture and management refers not only to the institutional dimension but also undertaken actions. It is justified to use theoretical and practical knowledge in the area of management to manage varied cultural projects. Cultural projects implemented as the so-called hard or soft projects require knowledge of approaches (traditional or adaptive) and a vast selection of project management methods in regards to time, cost, quality, risk and assessment. The basic assumption of various cultural projects in the area of architecture, organization of cultural events, IT projects or technical projects is the establishment of interdisciplinary project teams who are focused on cooperation and are open to exchange and creation of new knowledge, as well as efficiency of action. Efficiency of cultural projects requires methods of their assessment at various stages of their implementation. The *ex post* assessment of efficient project implementation is often a requirement imposed by assessing institutions which co-finance cultural undertakings.

Further research in the area of cultural projects implementation needs to include the creation of new specialist methodologies and methods adjusted to specific characteristics of cultural projects, as well as analyse what are the benefits

of the involvement in a project of representatives of various fields and academic disciplines at the international, national, regional and local levels.

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#### FIGURES:

Fig 1. Graphic visualization of results of *ex post immediate* assessment of cultural projects implementation efficiency

#### TABLES:

Table 1. *Ex post immediate* assessment of cultural projects implementation efficiency with an expanded method

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## CHAPTER IV

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### Tangible and intangible heritage in Spanish law<sup>1</sup>

#### SUMMARY

This article offers a brief analysis of the regulation of cultural heritage in Spain, under the 1985 and 2015 acts. First, it provides an overview of the Spanish law and refers to tangible and material goods. Second, it explains the introduction of ethnographic heritage as a category that is also a starting point for the legal treatment of the concept of intangible heritage. Finally, it introduces some reflections about the existing differences between both concepts and the need for different regulations.

**KEY WORDS:** cultural property, cultural heritage, tangible heritage, intangible heritage, Spanish Law, material goods

#### 1. INTRODUCTION

The importance and value of cultural, historical and artistic heritage is widely recognized under international, national and regional laws. Cultural heritage is perceived as one of the core elements of social, economic and cultural developments and ever more often it is guised as a global common good, to which humanity is both the custodian and beneficiary [Decision (EU) 2017/864 of the European Parliament and the Council of 17 May 2017 on a European Year of Cultural Heritage (2018), OJ EU L 131/1, 20.5.2017]. Art and cultural objects form separate classes of goods, which speak about the human condition and mirror the living conditions of individuals and communities. They provide knowledge about the creative process and the identity of those groups responsible for their production. Cultural heritage expresses continuity between the past and the present, introduces the idea of cultural identity and explains our fascination with antiquities [Roodt, 2015, pp. 1–5]. In Spanish law, the concept and history of cultural heritage, as well as its deciding characters, have been defined by doctrine [Parada, 1983, p. 274; Barrero Rodríguez, 1990, p. 120; Rams Albesa and More-

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<sup>1</sup> Paper made under research project DER2017-83970-P, 2018–2020 «La nueva información registral: requisitos, eficacia y aplicación práctica».

no Flores, 2001, p. 78] but, legally, we can find a definition in the 1985 Spanish Historical Heritage Act (*Ley 16/1985, de 25 de junio, del Patrimonio Histórico Español* – LPHE) [BOE-A-1985-12534, 29.6.1985]. According to these sources, cultural or historic-artistic heritage is a group of movable and immovable goods with artistic, historical, paleontological, archaeological, ethnographical, scientific or technical interest or value. This definition includes documentary and bibliographical heritage, archaeological sites, natural sites, gardens and parks with artistic, historic or anthropologic value. All these goods are defined by a character of historicity, because the aforementioned Act establishes a special status, in accordance with the notions of time and space.

The notion of time under the 1985 Act includes different possibilities of application. On the one hand, there is a general idea of time as an expression of historical value. On the other hand, there are special rules for goods where the time factor is defined by several years of existence, for instance documentary and bibliographical heritage goods. According to Article 49 LPHE, documentary heritage goods are integrated documents from public and private entities older than a specific number of years. Under Article 50 LPHE, bibliographical heritage goods are composed of manuscripts and printed works with three or less existent copies. Ultimately, cultural value is the determinative element in defining historical-artistic heritage. One should bear in mind that there is always culture in every human activity. The presence of one person implies the existence of culture. Yet the actual “heritagization” requires an assessment of the value of a given cultural manifestation in a determined historical or artistic context. There are some theoretical constructions designed to establish a common concept or denominator for all categories of cultural heritage. One of them refers to the notion of cultural goods, where the adjective “cultural” is used to establish its belonging to the history of civilization. The historical dimension concretizes the ambiguous definition of culture; a cultural good is a testimony of the past. Thus, the concept of heritage is defined by two aspects: culture and history [Barrero Rodríguez, 1990, p. 171; Díaz Vilela, 2006; Barrère, 2016, pp. 87–94].

Every historical-artistic good is defined by its value in a spatial-temporal perspective and in its cultural dimension. Heritage is a concept to which most people assign a positive value, and the preservation of material and intangible culture is generally regarded as a shared common good by which everyone benefits [Silverman, Ruggles, 2007, p. 3]. These conditions constitute the basis for special regulations under the general expression of cultural heritage law, because of their objective to conserve, divulge and spread culture. Beyond individual rights there is a general interest: there could not be liberty, equality or real democracy

without a culture solidly established in society [Orozco Pardo, Pérez Alonso, 1996, pp. 7, 21]. In Spanish law, Article 46 of the Spanish Constitution (*Constitución Española – CE*) [BOE-A-1978-31229, 29.12.1978] requires public powers to assume and promote the protection of Spanish cultural heritage, giving them great powers to undertake that mission: “The public authorities shall guarantee the preservation and promote the enrichment of the historical, cultural and artistic heritage of the peoples of Spain and of the property of which it consists, regardless of their legal status and their ownership. The criminal law shall punish any offences against this heritage.”

The constitutional requirement to public powers has to be complemented with the reference to Spanish territorial organization of the State. According with Article 137 CE, “The State is organised territorially into municipalities, provinces and Autonomous Communities that may be constituted. All these bodies shall enjoy self-government for the management of their respective interests.” Respecting to the matter of cultural heritage, there is a distribution of competences between the State and the Autonomous Regions – Articles 148 and 149 CE – so both bodies are required to fulfil the mandate established in Article 46. Consequently, there are autonomous cultural acts, focused on the protection of their regional historic-artistic heritage. However, for the purpose of this paper, only the national act will be considered.

The historical value of a good implies granting it a special status to enable its protection. Accordingly, the formal classification of a good as a cultural one includes an array of obligations and charges. That imposition is a direct consequence of the axiological and policy objective, enshrined in the Spanish Constitution and the 1985 Act to enable more and more people to be able to benefit from the cultural value of the good. Cultural heritage includes goods in private hands, in which case the cultural stewardship should be managed together with ownership rights. Thus, private property rights in cultural goods are demarcated by the general limits of the social function. In this context, that limit is the defence of culture as a collective interest of everyone and particularly affects the freedoms of disposal. In this context, “everyone” includes present and future generations, and not only Spaniards, because *voluntas legis* conceives culture as a universal good (a “universal universality”) [Cornu, Fromageau, Wallaert, 2012, pp. 63].

The discussion about the universal, national or local nature of cultural heritage is very interesting and transcends national laws and rules [Blake, 2015, p. 12; Taşdelen, 2016, pp. 1–6]. The constitutional duty to protect and encourage culture introduces a limit defined by the “pro-monument” principle: the cultural value of every good declared as part of historical-artistic heritage takes prece-



dence over private rights to it; or the “pro-culture” principle: the preservation of cultural heritage goods is more important than private interests. In private property rights over these kinds of goods, the ancient *ius abutendi* or “right to abuse” is forbidden and marks a boundary between the possibilities for use and the prohibitions placed on a private owner of a cultural good. The social function of ownership acts here as a concrete form of the objective of preservation of historical-artistic goods, in the name of their cultural value. Collective benefits derived from their conservation justifies the imposition of limitations on ownership.

## 2. CULTURAL HERITAGE CATEGORIES IN SPANISH LAW

In Spanish law, the concept of historical-artistic heritage includes different categories of goods. First, there are properties of cultural interest (*bienes de interés cultural*; Articles 9 to 39 LPHE), comprising both immovable properties and movable objects. In reference to immovable properties (*bienes inmuebles de interés cultural*; Articles 14 to 25 LPHE) there are five specific categories of protected sites and buildings:

- Historical monuments (*monumentos históricos*; Article 15(1) LPHE): immovable properties comprising of architectural or engineering work or works of colossal sculpture shall be monuments provided they are of historical, artistic, scientific or social interest.
- Historical gardens (*jardines históricos*; Article 15 (2) LPHE): delimited areas resulting from the organization by mankind of natural elements, sometimes complemented with constructions and considered of interest because of their origins or historical past or their aesthetic, sensory or botanical value.
- Historical units (*conjuntos históricos*; Article 15(3) LPHE): groups of immovable properties forming one continuous or dispersed unit of settlement, distinguished by a physical structure representing the development of a human community, in that it testifies to their culture or constitutes a value for public use and enjoyment.
- Historical sites (*sitios históricos*; Article 15(4) LPHE): places or natural landscapes linked to events or memories of the past or to popular tradition, cultural or natural creations and works of mankind having historical, ethnological, paleontological or anthropological value.
- Archaeological areas (*zonas arqueológicas*; Article 15(5) LPHE): places or natural landscapes where there are movable or immovable objects that can be studied using archaeological methodology, whether or not they have been extracted

and whether they are to be found on the surface, underground or below Spanish territorial waters.

With respect to movable properties (*bienes de interés cultural*; Articles 26 to 34 LPHE), they are movable goods defined by their cultural interest and should be recorded in a special inventory. Owners or possessors of these kinds of goods shall notify the public administration of the existence of such objects before proceeding to sell or transfer them to third parties. The same obligations are established for individuals or entities that habitually carry out trade in movable property forming a part of the Spanish historical heritage, who are also required to formalize with the administration a register of any transfer made of such objects. This is a concrete example of a limitation on the traditional freedom of owners due to the protection of cultural heritage.

The second large category is archaeological heritage (*bienes del patrimonio arqueológico*; Articles 40 to 45 LPHE). This category includes movable or immovable properties of a historical nature that can be studied using archaeological methodology, whether or not they have been extracted or whether they are to be found on the surface or underground, in territorial seas or on the continent itself. The category also encompasses geological and paleontological elements, relating to the history of mankind and its origins and background, including caves, shelters and places containing expressions of cave art.

The third large category is ethnographic heritage (*bienes del patrimonio etnográfico*; Articles 46 and 47 LPHE). This category includes movable or immovable properties and knowledge and activities that are or have been a relevant expression of a traditional culture of the Spanish nation in its material, social or spiritual aspects. Under this category, the legal regulation distinguishes:

- Immovable properties (*bienes inmuebles*; Article 47(1) LPHE): any buildings and installations whose method of construction is an expression of knowledge acquired, established and transmitted by custom and whose creation belongs totally or partially to a type or form of architecture traditionally used by communities or human groups.
- Movable properties (*bienes muebles*; Article 47(2) LPHE): all objects that constitute the expression or the product of labour, aesthetic and pleasure activities of any human group that are established and transmitted by custom.
- Knowledge and activities (*conocimientos y actividades*; Article 47(3) LPHE): this includes knowledge and activities derived from traditional models or techniques used by a specific community.

Finally, there is another category: documentary and bibliographical heritage (*bienes del patrimonio documental y bibliográfico*; Articles 48 to 58 LPHE): this

category includes a great number of elements which have in common cultural testimony through all types of data formats, concretized in concepts like “document” and “library”.

There are many differences between these categories. However, the LPHE establishes a system or rules whereby any object possessing the character of historic heritage is subject to defined limitations on the rights inherent in all private property rights over these special goods. These restrictions have consequences in the domain of private law [Capote Pérez, 2017, pp. 245–252].

The above-mentioned categories encompass a variety of cultural manifestations: tangible properties and intangible heritage, but the legal regulation is specially focused in the former. The latter is mentioned in the category of ethnographic heritage but is only a sub-division in a regulation where the material nature of the great majority of goods protected in the 1985 Act determines the protective regulation contained in it. In the distinction between tangible and intangible heritage, Spanish law is primarily centred on the protection of material goods. As we will see in the next part of this article, the mere mention of knowledge and activities and their brief definition will be insufficient to ensure a full protection of immaterial heritage.

### **3. THE REGULATION OF INTANGIBLE HERITAGE IN SPANISH LAW**

The introduction of the category of ethnographic heritage was considered a pioneering regulation [Martínez Sanmartín, 2011, p. 123]. In a way, the 1985 Act was reflecting some changes in the concept of cultural heritage initiated in the 1970s [Labaca Zabala, 2013, p. 105] when the previous pre-eminence of tangible goods was being compensated with some crescent interest about immaterial categories. In another way, it establishes a connection with some historical legal precedents from the Second Spanish Republic [Martínez Sanmartín, 2011, p. 124]. Nevertheless, the regulation of the intangible part of ethnographic heritage was criticized as folklorist and archaic [Martínez Sanmartín, 2011, p. 126; Labaca Zabala, 2013, p. 109]. Ethnographic heritage must be considered as something living [Labaca Zabala, 2013, p. 110] since, as a reflection of tradition, it is a link between the past and present, having one unchangeable part and another susceptible of evolving [Marcos Arévalo, 2004, pp. 927–928]. Despite all this, the 1985 Act did not consider this “living nature” of ethnographic heritage [Martínez Sanmartín, 2011, pp. 125–126] and its effectiveness in the protection of this category was limited.

Alongside, there was a development of the concept of intangible heritage in the areas of Ethnology and Anthropology, finally reflected in the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage [MISC/2003/CLT/CH/14]. This agreement, ratified by the Spanish State in 2006, determined the need of adapting the internal law to its content. This has been done through a new legislation, the 2015 Spanish Safeguard Intangible Cultural Heritage Act (*Ley 10/2014, de 26 de mayo, para la salvaguardia del Patrimonio Cultural Inmaterial*) [BOE-A-2015-5794, 27.5.2015].

The 2015 Act recognizes in its preamble the ampliation of the concept of cultural heritage, introducing the category of activity-goods, together with the previous one of thing-goods. It also mentions the interweaving between tangible and intangible heritage, but points to different ways to protect each one, counter-posing concepts of conservation and safeguarding. Next, in Article 2, it introduces a definition of immaterial heritage as uses, representations, expressions, knowledge and techniques that communities, groups, and, in some cases individuals, could recognize as an integral part of their cultural heritage, and mentions examples of that categories like:

- Traditions, oral expressions and linguistic modalities and particularities;
- Traditional toponymy;
- Social practice, rituals and festive events;
- Knowledge and uses related with nature and the universe;
- Gastronomy, cooking recipes and food;
- Some specific utilizations of natural landscapes;
- Some forms of collective socialization and organization;
- Traditional music, dance and sonorous manifestations.

Nevertheless, the existence of the two national acts and, also, of a new generation of regional cultural acts has not finalised the discussion about the regulation of tangible and intangible heritage in Spanish law. It is true that each category shall be regulated and protected according to its respective nature, but they are not strange to the other [Vaquer Caballería, 2005, p. 96]. The possibility of one, only and inclusive concept for both categories – for example, cultural goods – has been exposed but there is a difference of 30 years between the 1985 Act and the 2015 Act. The evolution and interaction between their rules must be analysed to determine if the way chosen by the Spanish legislators is useful to fulfil the constitutional mandate of protecting and promoting our cultural heritage.

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## Contemporary trends in experiencing cultural heritage

### SUMMARY

The aim of the paper is to describe trends in experiencing cultural heritage. Firstly, today cultural heritage is presented in newer forms. New technical and technological products have been used to share knowledge about cultural heritage more effectively. Experiences of cultural heritage are processed by the use of digital improvements in interpersonal communication. Additionally, cultural heritage is constantly changing and includes newer technical and technological products. Dynamic changes in the telecommunication development technologies allow historic items become part of the cultural heritage now. Moreover, tourists also become part of the process of experiencing the cultural heritage. They actively participate in experiencing places or events that reflect current lifestyle trends. These trends include: being environmentally friendly, taking care of health through physical activity and healthy eating, and the need for increasing self-awareness, including adhering to social roots and values.

The study aims to present the current and, consequently, potential directions of development trends in experiencing cultural heritage. One of the general directions relate to the fact that the way of presenting cultural heritage has been changed by the use of telecommunications technologies. In parallel, experiencing of cultural heritage can take place through active participation in stories and places connected with cultural heritage.

**KEY WORDS:** cultural heritage, values, experiencing cultural heritage, lifestyle

### 1. INTRODUCTION

Cultural heritage is a unique universal value of a given group and which people assign to things [González, 2011, pp. 234–244]. Cultural heritage is analysed in two dimensions – material and immaterial (also called intangible). First of them, material cultural heritage refers to the psychical world with all architecture, infrastructure, environment, papers, or artworks. The second one reflects to the immaterial values of a society that are recognized by a particular group as their cultural heritage. It includes practices, images, messages, knowledge, or skills [UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, executed in Paris on 17 October 2003, Journal of Laws, 2011, No. 172, item 1018]. Social values are presented by feelings, interpretations, choices, memories, and identity [Pur-



chla, 2010, p. 10]. The values of cultural heritage might be analyzed from many perspectives. A place or a subject might represent a mix of different values. These characteristics (values) can be the following: aesthetical, archeological, architectural, artistic, authentic, autotelic, commemorative, commercial, craftsman-like, decorative, didactic, documental, economical, educational, emotional, evidential, exemplary, exhibitory, financial, historical, informational, integrational, integrative, international, moral, national, objective, patriotic, political, practical, propagandist, protective, psychological, public, regional, religious, retrospective, sacred, scientific, sentimental, social, spiritual, spontaneous, subjective, technical, touristic, visual or the highest universal value [Murzyn, 2016, pp. 200–205].

The aim of the paper is to describe potential directions in development of trends of experiencing cultural heritage. One of the general directions relates to application of technology in presenting cultural heritage with the adoption of latest telecommunication technologies. From the technological point of view, cultural heritage is constantly changing and includes newer products. Not only the presentation of cultural heritage, but also participation in it has changed recently. People actively participate in experiencing places or events of cultural heritage that reflect current lifestyle trends. These trends are: increased social awareness which connects people with their roots and deep layers of social values, greater environmental sensitivity as well as the popularity of fitness and healthy lifestyle.

## **2. NEW WAYS OF PRESENTING CULTURAL HERITAGE AND NEW COMPONENTS OF CULTURAL HERITAGE**

What comes to mind when analyzing cultural heritage in the material form is usually the architecture or old archeological structures, such as for example, churches or sites of medieval battlefields. However, the infrastructural remnants of the industrial revolution are even products of the last 50 years are cultural heritage as well. A good example in this regards are non-used airports. Some of them have been transferred into museums as was the case in Paris with Le Bourget in Prague with Kbely or in Kraków with the Polish aviation museum, while others are maintained as cultural heritage items, as is the case in Berlin with Tempelhof or Munich with Riem [Pijet, 2014, p. 40]. Industrial heritage is also part of industrial culture with historical, technological, social, architectural, urban, and scientific values. It includes post-production objects, post-industrial complexes with all facilities and areas supporting the industry, including its social functions [Kronenberg, 2007, p. 39].

In addition to such infrastructure becoming cultural heritage, so have other outputs of technological development. “Marienbad” was the first computer game

created in Poland for the counting machine “Odra 1003”. Collecting such items is called “retrogaming”. It gives the owner an authentic, retrospective, and original experience of the first product [Garda, 2014, pp. 119–123]. Such examples show how items from the previous decades have impacted a perspective of cultural heritage. Many products and machines that were created only decades ago, became today a cultural heritage as well.

Today, more than ever before, cultural heritage is connected with technology and technological development. The Internet and mobile phones are widespread tools used in communication, but are also used for getting information and building relations. The advanced Internet infrastructure has a direct impact on the way people experience culture. Interactive technologies bring new values to cultural heritage. For example, the systems of virtual reality (VR) are now commonly used in museums and cultural centers. They are introduced there upon the work of a multidisciplinary of experts: archeologists, historians, scientists, and artists. As a result of their efforts, visitors can discover different features, learn about the environment, explore reality [Gaitatzes, 2001, p. 103].

There are also online museums. They might function as a supplement to a traditional museum or independently as a virtual museum with no physical building. In regards to the former, the entire museum collection is kept in the digital form and as such available to visitors. Usually, such sites consist of a presentation of items and virtual walks. They also allow for the use of the three-dimensional graphics that users can interact with. An interesting concept is gamification, which is the term describing the use of games and plot-based tasks in online museums [Pawłowska, 2014, pp. 48–53]. The virtual museum is usually accompanied by a brochure museum, a content museum, and a learning museum. The brochure museum includes basic information about the museum provided on its websites while the content museum includes object-oriented information in the form of catalogues and databases. The learning museum includes context-oriented information with the main goal of sharing knowledge among online visitors [Schweibenz, 2004, s. 3]. What is worth mentioning while discussing the potential of exploring heritage are the so-called 7D or 9D cinemas which engage many senses so that visitor not only sees and hears images but also experiences wind, vibration, motion, and many other psychical effects [Sulema, 2016, p. 1].

### **3. PARTICIPATING IN CULTURAL HERITAGE BY EXPERIENCING UNIVERSAL VALUES**

Cultural trends are, on the one hand, set and developed within new technology. However, on the other hand, there is also a trend of experiencing cultural back-

ground in accordance with universal values which are connected with identity. While experiencing cultural heritage through digital technology takes place online, there is also a need to experience cultural values in a direct connection with the values of the ancestors which can be found in the psychological world. Thus, in the same way as the “retrogamer” aspires for the authentic experience, people want to touch cultural objects from centuries ago and feel them in a not changed way.

Story-telling was probably one of the oldest ways of sharing cultural experiences across generations. Cultural heritage, especially local, is often kept alive in that form [Kalinowska, 2019, p. 35]. Fairy tales or just tales and all kinds of myths represent the uniqueness of civilizations. A journey that a hero or heroes of an old story takes is usually full of symbols which reflect the community’s values. Cultural archetypes are usually kept in the old original form into which the listeners can dive into while listening [Jacobi, 2014, p. 61]. This fact adds even more value to local tales which are shared among people. Additionally, some people look for sources of their roots by getting to know the rituals of their ancestors.

Sharing local stories or experiencing old rituals might be seen as another way of keeping cultural heritage alive. Thus, tourists want to participate in culture through events or create them and shape their feelings through such experiences [Weiler, 2015, p. 3]. Not that long ago it was a tour guide who would tell the stories and his/her charisma skills were enough to have people feel the meaning of culture. Today, an increasing number of people want to feel that they are a part of their culture and experience what their ancestors felt, what they experienced, and even try to imagine the world the way it was seen in the past. They feel the need to experience culture in a deeper way, one that it engages many senses; not only sight or hearing but also touching and feeling. This is where the 7D or 9D technology can prove useful. However, there is also a visible need among contemporary culture recipients to put technology aside for a little bit and to experience the old rituals, which can connect them with the universal values of society. This can be seen in the so-called agrotourism which offers such activities as horseback riding, fishing, winter sports, bonfires as well as traditional agricultural work, or heritage themes of different minority ethnic groups from the past [Dorocki, 2020, p. 78].

#### **4. EXPERIENCING CULTURAL HERITAGE BY PHYSICAL ACTIVITY**

Another way of experiencing cultural heritage is by participation in events based on physical activity. One of the modern trends is healthy lifestyle and fitness. Consequently, there are many tourist attractions which offer participation in ther-

apeutic, recreational, or training activities. As a result we can say that cultural heritage can also be experienced through such activities as renting canoes, bicycles or scooters, being involved in amateur hunting, or rides on horses in park complexes. The example of the “Urban Ranger Camp” from Copenhagen is interesting in this regard. Through this activity, visitors can experience the city by climbing many ladders, thereby seeing the city from a completely different perspective. Also in Copenhagen, one can join the “Running Tours Copenhagen” which presents cultural heritage, in English or Danish, in the form of running exercises. A similar activity is offered in Dubrovnik and Budapest. In Dubrovnik there are also swimming trips, which allow for sightseeing from water and include swimming from one point to another. Experiencing culture takes place in the form of a swimming exercise, which is highly valued by the participants. In many cities there are similar activities in the form of bike tours, which allow for exploring cities while cycling [Bursiewicz, 2018, pp. 44–57].

Combining psychical activity and sightseeing is not only a result of the healthy lifestyle trend but also a way to save time, spend it effectively and in an attractive way at the same time. As a result, tourists can experience the city and its most valuable parts, including its cultural heritage, and at the same time meet their personal goals of being healthy and fit. In that case there is observed re-valuation of the form of cultural heritage experience – it is no longer just walking or walking with a guide where the main goal is observing architecture. Today, sightseeing can also take place through psychical activity and be part of it. This is caused by changes in people’s lifestyles which impact culture as well.

All in all, experiencing cultural heritage is often based on the so-called 3xE (entertainment, emotion, education). This method is applied in the so-called questioning. In other words, sightseeing and experiencing of cultural heritage in a non-structured way, with no markings of routes, based on hints, and solving riddles. Such tourist paths are used by adults, children, families, teachers, and even bike riders [Pawłowska, 2014, p. 30].

## **5. OPPORTUNITIES IN EXPERIENCING CULTURAL HERITAGE BASED ON THE NEWEST CONSUMER TRENDS**

Cultural heritage development might be also considered one of the aspects of consumer trends. One of them is that people generally live longer and want to be socially active as long as they can, and be treated the same way as younger generations. This, in turn, might bring new opportunities for tourist offers and their allocation. Seniors in Western Europe, or the so-called later lifters in the age 55–59,

have more savings and income than younger generations. Consequently, this group might be encouraged to spend money on tourist attractions which will bring them closer to culture. Moreover, they are interested in enjoying life and deepening their spiritual beliefs – these needs might be fulfilled by trips, travels, and offers dedicated to keeping cultural heritage and values alive. In this context, a new trend called “senior gap year” has emerged. This is the name for the need for travels or experiences that is observed among older people [Angus, 2019].

Another example of a modern trend is environmental responsibility called zero-waste, eco-friendly, or plastic-free. In this vein, Mauritius Conscious offers eco-friendly travel with local food, drinks, and meetings – all activities assure no harm to the environment or even are aimed at improving it. Generally, customers are more conscious of what and how they do and they want to experience culture, based on the zero-waste philosophy. In a similar way, food offers that include vegan options, especially if made with local products, are very attractive. Their consumers can taste local food with a sense that no damage is done to any animal. The cultural dimension is also visible in the sustainable development projects undertaken by local authorities. Polish local governments, supported by other stakeholders, engage in implementing top-down approaches to preserving culture from the environmental perspective [Murzyn-Kupisz, 2013, p. 103].

There is also a growing interest in using alternative medicine [Angus, 2019]. People are increasingly more interested in local methods of treatment which date back to their ancestors. This knowledge of treating different diseases is also a big part of cultural heritage – thus many tourists are encouraged to spend money on such methods of medical treatment which emerged from local beliefs and knowledge.

## 6. CONCLUSIONS

Today, cultural heritage can be seen in a different dimensions than it was the case a few decades ago. Thanks to technology people these days have a chance to experience some well-known products from centuries ago but also products that have recently started to be part of the past. This is caused by the dynamic changes taking place in the world and its development. In this way, technology has brought new possibilities of experiencing cultural heritage. Exploring the world and its values can take place by different means, not only reading books or walking. It can take the form of visiting websites with virtual reality. Ways of learning our heritage will probably develop even further through more complex digital tools which will allow for digital experiences engaging many senses. Using technology explains in part how cultural heritage is adjusted to today’s environment.

Technology development and people's willingness to use it as a means to experience the cultural heritage is an interesting topic and attractive concept for tourism. However, in many cases tourists also want experience the same reality their ancestors did, or experience values transferred to our times. What makes people interested in cultural heritage are authentic experiences, fulfilling aesthetic, artistic, educational, emotional, or spiritual needs. Knowing the past and understanding social patterns, they feel that they develop and adhere to universal social values. The latter is the second main direction in the trends of experiencing cultural heritage. Namely, people want to be closer to their roots and have more authentic experiences of the past. People that feel connected to deep social values (universal values) can also experience cultural heritage by their emotions towards historical things and places.

Lifestyle-related trends also impact the attractiveness of culture exploration. Thus, trend of a healthy lifestyle and being fit is well reflected in touristic offers. Accordingly, with many activities in place, the way people explore heritage has been transformed in such a way that physical exercises are synchronized with sightseeing. This shows the new demand placed to cultural heritage today where harmony with the lifestyle is necessary. It is possible that in the future these experiences will change with new lifestyles. This will most likely be true in regards to a trend related to a greater environmental awareness.

To summarize, the evolution of cultural heritage experience is strongly connected with changes that are taking place in the contexts of technological development, people's emotional needs and trends in lifestyle. These changes, on the one hand, impact the new ways of presenting cultural heritage and, on the other hand, show the development of participation in cultural heritage experiences. Moreover, cultural heritage changes with time in such a way that it already adjusts to technical and technological developments and will incorporate them even more in the future.

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# **II**

## **Protection of tangible cultural heritage – case studies**



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## Urban cultural heritage – Current conservation problems: The case of Skrzydlina

### SUMMARY

At present, Skrzydlina is a village in the Lesser Poland Voivodeship, in Limanowa County, in the municipality of Dobra. It is a small settlement, whose years of prosperity and glory are long past.

Apart from the historic parish church of St Nicholas, the locality also features highly interesting relics of a medieval urban layout which are currently under no form of conservation. This layout was most probably delineated during the reign of king Władysław II Jagiełło, who permitted the founding of the town of Skrzydlina in place of a village that had existed at the site since at least the first quarter of the 14<sup>th</sup> century. Unfortunately, this is the only mention of the town's founding that has so far been found, while the founding itself was ultimately not fully carried out for reasons so far unknown. This is not the only case of this type on the territory of historic Lesser Poland. Other instances of the unsuccessful founding of a town applied to places such as, among others, Lipowiec, Klasztor or Zygmuntowo.

The medieval urban layout in question, which is associated with the unsuccessful founding of Skrzydlina, has survived to our times in a relic form. As it has already been mentioned, it is not under any form of statutory conservation. Here one should ask the question whether it should be? It is not as legible or well-preserved as the urban layouts of other historic medieval towns in the Lesser Poland Voivodeship, and whose applications for inscription in the heritage sites register were being processed during the time of the writing of this paper (Skawina, Nowy Targ, Krościenko nad Dunajcem).

The paper analyses the problem of the potential for placing the town in question under conservation on the basis of the currently applicable Monument Protection and Preservation Act. This paper argues in favour of a need to amend the currently applicable Monument Protection and Preservation Act of July 23<sup>rd</sup> 2003 in terms of extending the forms of monument conservation, primarily in terms of protecting Polish cities and towns.

**KEY WORDS:** urban heritage, historic town, Skrzydlina, conservation

### 1. INTRODUCTION

The subject matter of the protection of historic urban layouts in the territory of historical Lesser Poland has been discussed by the author several times. However, publications on this subject pertained to layouts whose degree of preservation, the legibility of their model and thereby their cultural values are indisputable

[Kuśnierz-Krupa, 2019a, *passim*; Kuśnierz-Krupa, 2019b, pp. 59–68; Kuśnierz, Kuśnierz-Krupa, 2019, pp. 37–44]. Examples of such towns include Skawina, Nowy Targ, Gorlice, Grybów or Krościenko nad Dunajcem.

This paper discusses the problem of protecting a historic city from a slightly different angle. The case under study here is a locality that was established in the Middle Ages and is the so-called unsuccessful founding and its urban layout has survived to the present time in a relic form. The objective of the study was to analyse whether such a layout should be placed under conservation, and if so, to what extent and whether it is currently possible to do so on the basis of the forms of conservation available in the Monument Protection and Preservation Act of the July 23<sup>rd</sup> 2003 [Journal of Laws, 2020, item 282 as amended].

## 2. SKRZYDLNA – HISTORY OF THE SETTLEMENT’S ORIGIN AND ITS URBAN LAYOUT

Skrzydlna is located in the Lesser Poland Voivodeship, in Limanowa county, in the municipality of Dobra. Its current population is just below 1,000 people. Despite its long history, the locality produces an impression of a forgotten settlement whose glory days are long behind it.



Fig.1. Lesser Poland Voivodeship on a map of Poland and map of Lesser Poland Voivodeship featuring the location of the Skrzydlna. Prepared by the author.

Skrzydlna was founded during the Middle Ages. The town was first mentioned in written sources in 1325, and described as “Cridlna seu Antiqua Rudel”. It is known that it was already the seat of a parish during this period. Afterwards, the settlement was mentioned ten years later, together with Mikołaj, the parish priest of Skrzydlna’s church [Kiryk, 1985, p. 249; Skoczek, 2009, p. 22–25]. Sources dated to 1361 mention the person of the treasurer of Kraków – Marek of Skrzydlna. Three years later, king Casimir the Great, who is known for his urbanisation-related activity, was reported to have agreed to a request put forth by the brothers Andrzej and Stanisław Ratoń, and approved the transfer of Skrzydlna and the nearby Wola Skrzydleńska under the jurisdiction of German town rights [Kuraś, 1971, p. 176; Sułkowska-Kuraś, Kuraś, 1969, p. 130].

Skrzydlna’s town charter has not survived to our times. It is only known that king Władysław II Jagiełło agreed to the founding of the town in 1424 [Sułkowska-Kuraś, Kuraś, 1975, p. 166]. It was most probably a knightly charter, as sources dated to the 1430s mention a man named Ratoń, an heir to Skrzydlna, who was also the leaseholder of Nowy Targ [Kiryk, 1985, p. 249]. It is difficult to find information about the town in later sources. It should therefore be assumed that this founding did not succeed. Similar situations of towns whose founding was not carried out in full, or when a town did not develop as had been expected and later deteriorated and returned to the status of a village, are known in literature (e.g. Lipowiec, Klasztor or Zygmuntowo).

The founding of towns during the Middle Ages, apart from legal codification, also included the delineation of their urban layouts. During the period around the middle of the 13<sup>th</sup> century, such layouts already had a well-defined, orthogonal layout [Książek, 1994, *passim*; Kuśnierz-Krupa, 2019c, pp. 18–23].

It can also be presumed that such a layout had been delineated in Skrzydlna in association with its founding and the planned development of the settlement. Today, it is legible only in a relic form. It is also difficult to ascertain the model on the basis of which the town was founded. It is possible that it was based on the nine-field model, which was the most prevalent at the time and featured a centrally located market square with a single strip of town blocks encircling it. In order to verify the hypothetical model of Skrzydlna’s founding, apart from field studies, the author also performed an initial analysis of archival cartographic materials (the First Military Survey, a cadastral plan from mid 19<sup>th</sup> century and the Second Military Survey). However, these analyses did not yield the expected results and did not confirm the initial hypothesis, as Skrzydlna’s layout, as described on historical plans, has been considerably transformed.



Fig. 2. Skrzydlna on the First Military Survey (of Galicia and Lodomeria) from the years 1779–1783; [www.mapire.eu](http://www.mapire.eu), [access: 20.06.2020].

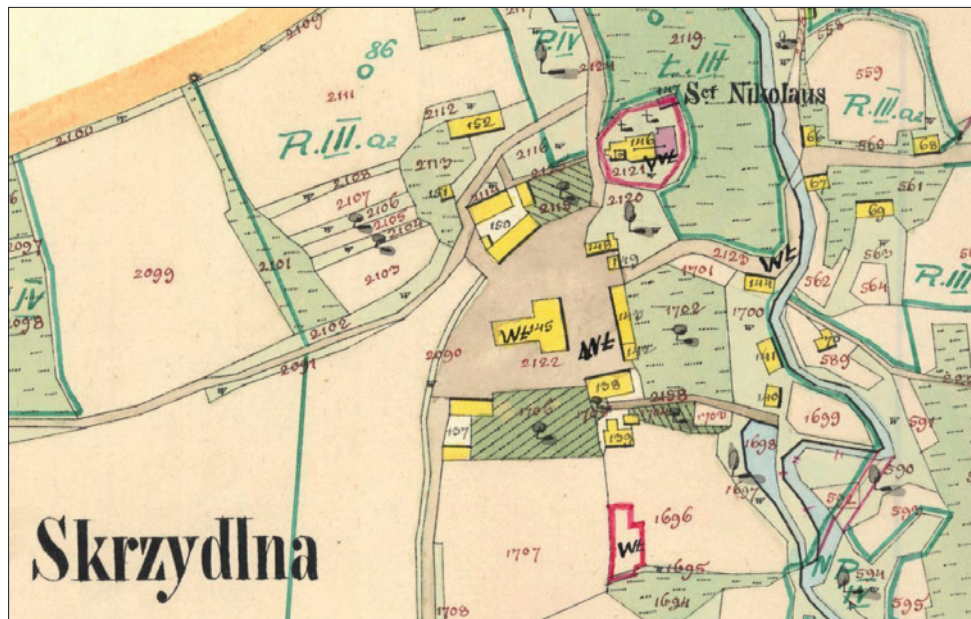


Fig. 3. Cadastral plan of Skrzydlna from 1845. Map [in:] National Archives in Kraków, sign. 29/280/o/10.1/1945.

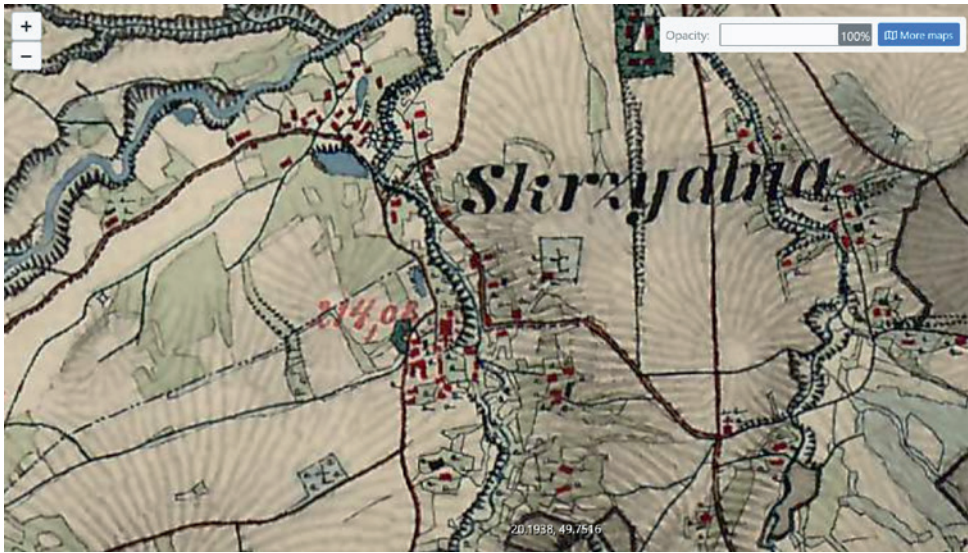


Fig. 4. Skrzydlna on the Second Military Survey (of Galicia and Bucovina) from the years 1861–1864; [www.mapire.eu](http://www.mapire.eu), [access: 20.06.2020].

The hypothesised urban layout that formed the basis for the town's delineation was already illegible towards the end of the 18<sup>th</sup> century. The cadastral plan (Galician Cadastre), drawn to a precise scale of 1:2880 [Zachariasz, 2012, pp. 63–83], only displays a fragment of the defined urban layout of the former town. An outline of the southern and eastern frontages of the market square is observable. Perhaps the urban layout was adapted to the parish church of St Nicholas, which is older than the founding [Chlebowski, Walewski, Sulimierski, 1880–1914, p. 726]. This church occupies the north-eastern block, diagonal relative to the market square which today is highly transformed and not fully legible.

What is interesting is that if one were to use up-to-date field studies and an analysis of the current version of the cadastral map, one would get the impression that the market square has survived almost unchanged to the present (see fig. 5, 6). Only an analysis of the previously mentioned maps (see fig. 1, 2, 3) brings us to a conclusion concerning this matter, which has already been listed previously. Thus, there is very little data about the shape of Skrzydlna's original urban layout. However, this does not mean that studies associated with formulating a hypothesis about its initial appearance cannot be undertaken. To this end, the author performed a comparative study of urban layouts from Kraków's land and a multi-directional analysis of both historical maps and



the current cadastral map. It was concluded that the town had most probably been delineated using the large sznur (rope) unit of measurement, also known as the Kraków sznur, which is 45 metres long, i.e. 150 feet long (assuming a foot length of 0.3 m). A market square in the shape of a square with sides 2 sznurs long, i.e.  $90 \times 90$  metres, was delineated. It can also be assumed that the town blocks around the market square had a depth of 1 sznur, i.e. 45 metres. If we assume that a nine-field model was used during the delineation of Skrzydlna, then the original circulation layout probably included 8 streets (with 2 streets extending from each corner of the market square, see fig. 4). Due to the considerable degree of the layout's erasure, it is not currently possible to reconstruct the division of the blocks into settlement plots and to assess their width. The town's buildings were made of wood up to the 19<sup>th</sup> century. This can be clearly seen on the cadastral plan, which shows wooden buildings in yellow (see fig. 2 and fig. 4). The wooden building located on the market square is an interesting element. It is difficult to find information about its function. Perhaps it was an inn or an administrative building.

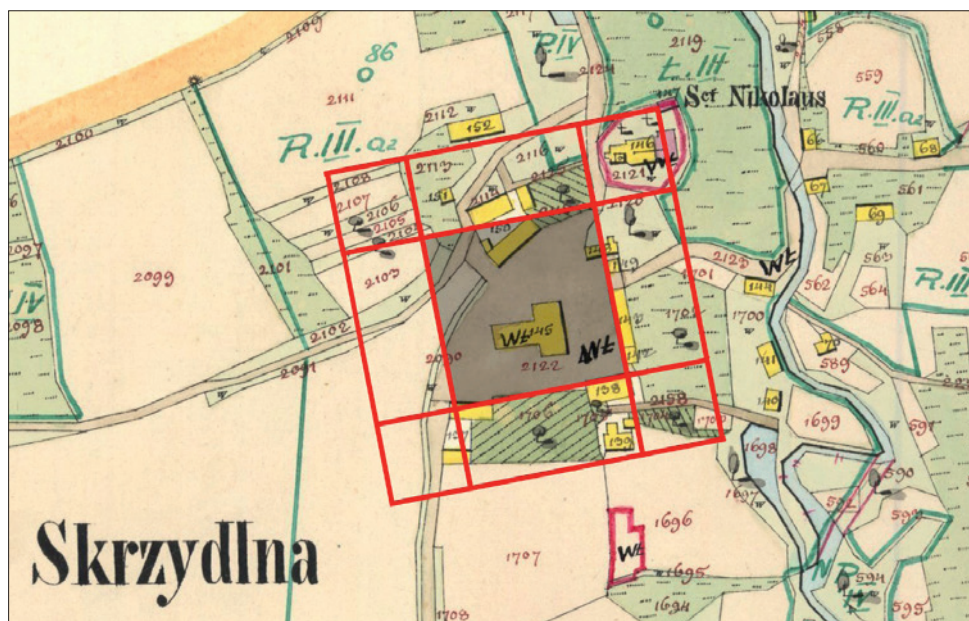


Fig.5. Initial hypothetical reconstruction of Skrzydlna's urban layout on a cadastral plan from 1845. Drawn by the author.



Fig. 6. Contemporary Skrzydlna on an orthophotomap;  
[https://mapy.geoportal.gov.pl/imap/Imgp\\_2.html?gmap=gpo](https://mapy.geoportal.gov.pl/imap/Imgp_2.html?gmap=gpo), [access: 21.06.2020].



Fig. 7. View of a fragment of the eastern frontage of the former market square in Skrzydlna and the parish church in the distance. Photo by: D. Kuśnierz-Krupa, 2020.



Fig. 8 a, b, c, d. Views of the center of Skrzydlna. Photo by: D. Kuśnierz-Krupa, 2020.

### 3. ANALYSIS OF HISTORICAL VALUES AND CURRENT FORMS OF THE CONSERVATION OF SKRZYDLNA'S CULTURAL ASSETS

Despite secondary transformations, the tradition associated with the fact that Skrzydlna used to be a town in the Middle Ages should be preserved. An analysis of the town's historic assets demonstrated that its most important monument is the 16<sup>th</sup> century St Nicholas parish church [Kornecki, 1999, p. 252], which is located on a block positioned diagonally relative to the market square. This wooden and masonry building is under conservation by an inscription in the Lesser Poland Voivodeship immovable monuments register (No. A-177 of December 23<sup>rd</sup> 1961). Apart from the church, other buildings under statutory conservation by an inscription in the monuments register include a manor (No. A-603 of December 8<sup>th</sup> 1989) along with a manorial garden (No. A-301 of June 26<sup>th</sup> 1982) [Register of monuments in the Lesser Poland Voivodeship, <https://www.wuoz.malopolska.pl/rejestrzabytkow/>], which is dated to the second half of the 16<sup>th</sup> century [Chrzanowski, Kornecki, 1982, p. 217]. The buildings in question are the only elements of the cultural landscape currently under conservation. Skrzydlna does not have a local spatial development plan in place that would allow the Lesser Poland Voivodeship Monuments Conservator to introduce additional provisions with respect to, among other things, placing the area of the historical urban layout under conservation.

The current Monument Protection and Preservation Act of July 23<sup>rd</sup> 2003 (as amended) assumes the protection of broadly understood immovable monuments through the forms of conservation stipulated in its text: an inscription in the monuments register, acknowledgement as a monument to history; the establishment of a cultural park and instituting conservation measures in a local spatial development plan (or in a public project siting permit or a planning permit) [Journal of Laws, 2020, item 282 as amended]. When analysing the case of Skrzydlna and the postulate of placing this former town under adequate statutory conservation, one should first opt for the monuments register and/or the local spatial development plan. However, it is difficult to ascertain whether a decision approving an inscription would be issued in the case of such a decayed urban layout. Here it should be noted that the legislators do not provide the possibility of protecting a "historic town" as such. Only elements of such a town can be placed under conservation, including its urban layout, cultural landscape or development complex. In the case of Skrzydlna, when there is no local spatial development plan in place and the state of surviving elements such as the urban layout or cultural landscape does not guarantee their inscription in the register, a form of protection that would allow for justifying it by using Skrzydlna's intangible values – i.e. those as-

sociated with the tradition of the existence of a medieval town at its site – could be a suitable solution.

It is therefore proposed to perform an analysis of the possibility of amending the current Act in terms of expanding the forms of monument conservation to include a form of conservation linked with assigning the status of a “historic town” to settlements. Conservation tasks described in a decision concerning the conferment of this form of conservation upon a given town could be implemented through the obligatory enactment of a local spatial development plan for the area (areas) indicated in the decision.

#### 4. CONCLUSIONS

The study concerning the analysis of the historical value of the locality of Skrzydlna – a former medieval town – found certain gaps in the presently available forms of monument conservation stipulated by the Monument Protection and Preservation Act of July 23<sup>rd</sup> 2003. In the author’s opinion, it indisputably lacks a form of protection that would ensure the conservation of historic towns, accounting for both their tangible and intangible values, which are also highly essential in their case. Therefore, it is postulated that the current Act should be amended so as to expand the available forms of monument conservation while primarily accounting for the protection of Polish cities and towns, which are often deprived of this form of protection despite deserving it beyond all doubt. The amendment in question should apply to Article 3 of the Act and concern the terms used throughout. This Article should feature a definition of a historic town. This definition, as formulated by the author, is as follows: “A historic town has: a historical origin; material values in the form of a historical urban layout or its elements and historical structures or architectural complexes, and/or intangible values in the form of, for instance, place-based tradition, a historic name and/or a historic man-made cultural landscape comprised of, among others, panoramas, perspective enclosures, visual axes and the scale of buildings.” Apart from this proposed change to the provisions of Article 3, Article 7 should likewise be amended to include one more form of monument conservation, i.e. the “historic town”.

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**FIGURES:**

- Fig. 1. Lesser Poland Voivodeship on a map of Poland and map of Lesser Poland Voivodeship featuring the location of the Skrzydlna.
- Fig. 2. Skrzydlna on the First Military Survey (of Galicia and Lodomeria) from the years 1779–1783.
- Fig. 3. Cadastral plan of Skrzydlna of 1845.
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## CHAPTER VII

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# Access to Polish cultural goods abroad

### SUMMARY

The article aims to provide an overview of access to Polish cultural goods abroad. Due to the complicated history of Poland, many cultural goods have been taken abroad over the years. Some of them were deported by the partitioning powers, others by Poles who emigrated. The article will also discuss instruments which ensure access to cultural goods. A division of the countries where Polish cultural goods are located will be proposed. The problem of orphaned heritage will also be discussed.

**KEY WORDS:** cultural goods, Polish cultural goods, digitalization, abroad, access to cultural goods

### 1. INTRODUCTION

Since the partitions, Polish cultural goods have been greatly dispersed. Some of them were taken from Poland by the partitioning powers, some traveled abroad to find shelter, other works were taken by their owners who emigrated. However, the cultural goods, which were left abroad after the changing of the borders, should not be forgotten about. Conversely, it is necessary to preserve and cultivate the memory of these goods. It is also important to emphasize that the issue of property rights does not often matter at all and that restitution is not the topic of this article. Here, the issue in question is the right to heritage [Pruszyński, 2001, p. 401]. The preamble to the Convention on the Protection of the World Heritage and Natural Heritage of November 16, 1972 [Polish Journal of Laws, 1976, No 32, Item 190, hereinafter the 1972 Convention] indicated that the purpose of the Convention is to preserve unique and irreplaceable goods regardless by which nation they are owned. Even earlier, UNESCO adopted the Declaration of International Cultural Cooperation, which was adopted by the General Conference at the Fourteenth Session in Paris, 1966 [Declaration of International Cultural Cooperation, <http://www.un-documents.net/dpicc.html>]. Article 1.1 states that each culture has dignity and values which must be respected and preserved. Article 1.2 states that all people have the right and the duty to develop their culture. Halina Nieć argues that



this Declaration was crucial because it was through it that the international community decided for the first time to direct relationships between the basic principles of international law and the issue of cultural relations, which indicated the principle of sovereignty, the principle of equal rights, the principle of non-intervention in the internal affairs of states and the principles of mutual benefit [Nieć, 1980, p. 7].

The answer to the question on what makes the national heritage can be found in the report of the Supreme Audit Office (Najwyższa Izba Kontroli). It states that national heritage is defined as cultural material heritage related with Poland and Poles (also Polonia), who live outside Poland – the product of their work, testimony of their presence or repression (e.g. deportations, labor, death). Tangible heritage includes movable and immovable monuments, e.g. castles, manor houses, strongholds, monuments, cemeteries, paintings, and vehicles. Intangible heritage is considered to include traditions, oral communications, performances, shows, and rites. The concept of intangible heritage also includes skills related to the performance of traditional crafts [Informacja o wynikach kontroli w sprawie ochrony polskiego dziedzictwa za granicą (Information on the results of the inspection on the protection of Polish heritage abroad), <https://www.nik.gov.pl/plik/id,14417,vp,16876.pdf>]. It is very difficult to decide which cultural good can be qualified as the special culture goods. The decision has to be made between two concepts: should we treat as special items all the objects that have connection to Poland or Poles or only these which have special artistic, cultural or historical value<sup>1</sup>. The protection of all goods would be a great challenge, without any doubt. Hence, it would be better to divide goods into the different categories and graduate protection. This issue will be further discussed in next part of the article.

## **2. SELECTED POLISH LAW REGULATING ACCESS TO CULTURAL GOODS ABROAD**

The main source of law is the Constitution of the Republic of Poland [Polish Journal of Law, 1997, No. 78, item 483, as amended]. Its Article 5 states that the Republic of Poland protects national heritage and provides protection of the environment, guided by the principle of sustainable development. Another regulation is stipulated in Article 6 of the Constitution. Article 6.1 provides that the Republic of Poland creates conditions for the dissemination and equal access to cultural goods, which is the source of identity of the Polish nation, its duration and development.

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<sup>1</sup> This classification of important cultural goods depends in fact on their meeting the requirements for recognizing the object as a monument regulated by Article 4 of the Act of the protection of monuments and care of monuments of July 23<sup>rd</sup> 2003 [Polish Journal of Law, 2020, item 282, as amended].

One of the key sources of information about Polish activities in this regards are presented in the government program of cooperation with Polish diaspora and Poles abroad in the years 2015–2020 [Rządowy program współpracy z Polonią i Polakami za granicą w latach 2015–2020 (The government program of cooperation with the Polish diaspora and Poles abroad in 2015–2020), <https://www.gov.pl/attachment/f428c238-94e8-4581-9c8b-4dbbdco796dd>]. Evidently, this document contains only general information, such as provision of help to organizations, museums, libraries and archives in their efforts to record and document Polish cultural monuments. The support for the upkeep of cemeteries and graves of Poles who played an important role in Polish culture is regarded as very important.

Also, of great importance are bilateral agreements. Poland has such with, for example, Belarus (March 25, 1995) [Porozumienie między Rządem Rzeczypospolitej Polskiej a Rządem Republiki Białorusi o współpracy w dziedzinie ochrony dziedzictwa kulturowego (Agreement between the Government of the Republic of Poland and the Government of the Republic of Belarus on cooperation in the field of cultural heritage protection), <https://traktaty.msz.gov.pl/getFile.php?action=getfile;o&iddok=6681>]. Article 1 of this Agreement states that the parties will carry out joint registration, inventory and research works aimed at determining the number, value and condition of movable and immovable cultural goods located on their territories that are connected with culture and history of second parties. Poland has similar agreements with Russia, German, Italy, etc. However, to exercise the right to Polish heritage the law itself is not needed. In this regard, more important are often the activities of the non-government organizations or the Polish people. With no interest in cultivating memory of the society, the laws are of no help.

### **3. POLISH CULTURAL GOODS ABROAD – DIVISION OF COUNTRIES**

In today times Polish cultural goods can be found in many countries due to the high mobility of the Polish people. Thus, inventory and research works aimed at determining the number, value and condition of movable and immovable cultural goods are undertaken on their territories. To classify them the following division of countries, based on the source of cultural goods found in the country, can be suggested:

- a) former partition powers (including the invaders during the Second World War);
- b) countries that were invaders in earlier centuries;
- c) countries in which Poles settled and placed cultural goods there, created them or found themselves there in a different way;
- d) countries whose territory is the former Polish lands.

Seemingly, the easiest way to access Polish cultural goods is in the countries where Polish people settled and placed cultural goods. In such countries there are often many Polish organizations or institutions. In Italy for example, there is the Polish Institute in Rome (Polski Instytut w Rzymie/Instituto Polacco in Roma). These institutions safeguard Polish cultural goods and promote Polish culture. In Rome, there are many artefacts related to Poles. Among them is the monument of Henryk Sienkiewicz located at the *Quo Vadis* church in Rome or the plaque commemorating the stay of Adam Mickiewicz in 1848 [Tablica pamiątkowa pobytu Adama Mickiewicza (A plaque commemorating the stay of Adam Mickiewicz), <http://www.polonika.gov.pl/pages/pl/polonik.php?id=417&name=rzym-tablica-pamiatkowa-pobytu-adama-mickiewicza-w>]. There is also Jan Matejko's masterpiece "Sobieski at the battle of Vienna", which was presented to pope Leon XIII in 1883 by the author who was one of the most famous Polish painters. In such cases, the ownership of the artistic work is unquestioned, but at the same time, the Polish people have the right to treat the painting as part of their heritage.

A similar case is for example with Paris. There, during the partitions, Poles built the famous *Hotel Lambert*, a place which Polish emigration used as a center of their life. The group of émigrés who used the premises included: Prince Adam Jerzy Czartoryski, Fryderyk Chopin, among others. Because of their presence there many Polish documents and archives are still to be found in Paris. In the 20<sup>th</sup> century, Jerzy Giedroyc also created a center for emigration there and published his famous magazine "Kultura" [Jerzy Giedroyc, <http://www.kultura-paryska.com/pl/ludzie/pokaz/g/jerzy-giedroyc>].

The next category is the group of countries whose present territory lies on former Polish lands. Thus, cultural assets that remained in today's Ukraine are very important for Poland. Lviv was one of the most beautiful cities in Poland and many Polish cultural goods, archives, buildings stayed there until today. Among them are, for example, the collection of Polish 19<sup>th</sup> century paintings and the collection of the Ossoliński Library<sup>2</sup>. On 18 September 1997 Poland was filing for restitution of the latter, but did not succeed. The application for the collection of the National Ossoliński Institute was prepared by Tadeusz Polak, who held the office of the Government Plenipotentiary for Polish Cultural Heritage Abroad. The application depicted the fate of the institution and described individual elements of the collection – including the Library, the Archives, the Collection of Magazines as well as the Collections of Painting [Wnioski rewindykacyjne księgozbioru Ossolineum

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2 Ossoliński Library was the part of the Ossolineum, which was the culture and national institute founded in 1817 by Józef Ossolinski. The Ossolineum became one of the most important research centres for history and Polish literature.

oraz dzieł sztuki i zabytków ze zbiorów lwowskich (Reclamation applications for the Ossolineum book collection and works of art and monuments from the Lviv collections), 1998, p. 18]. Poland still hopes that the works of the Ossoliński Institute will be returned to it soon.

The greatest challenge are the countries which were the former partitioning powers (including the invaders from the Second World War ) and the countries that were the invaders in earlier centuries. A great deal of Polish cultural goods was looted by representatives of these states and until today were not returned. In the last years, Germany have started many programs examining the provenance of its museum collections [Provenienzforschung, <https://www.hamburger-kunsthalle.de/provenienzforschung>]. However, for the purpose of the analysis, a distinction needs to be made between the goods that were looted during the Second World War and the goods that were left by Poles themselves, during the long period of immigration. Access to the latter group is much better.

The greatest problem is with access to Polish cultural goods in Russia. As a result of the partitions, the Second World War and “*Trophy brigades*” [Akinsha, 2010], a lot of Polish artefacts are still to be found in the Russian Federation. Before the First World War, there were many Polish associations in Russia, for example “*Towarzystwo Opieki nad Zabytkami Przeszłości – Koło w Petersburgu*”. Their goal was to prepare records of Polish goods. Such documents were then the basis for restitution. However, as of today the Polish state still does not have full knowledge which Polish cultural goods are in Russia, and access to them remains highly difficult.

The group of countries that were invaders in earlier centuries includes Sweden. As a matter of fact, one of the largest plunders in the history of Poland before the Second World War took place during the Swedish invasion in 1655–1657. The Swedes then took away everything they could put on the ships; all palace furnishings were removed – window frames, door frames, wooden floors and stone floors were torn off, marble stairs and marble columns were dismantled. The rest was either blown up or burned. After their invasion, “Poland became a veritable cultural desert” [Nahlik, 1958, p. 18]. The first research on the scale of the plundering was undertaken only in the 20<sup>th</sup> century. In 1914, the expedition of the Polish Academy of Sciences conducted a thorough search in Swedish archives and libraries. Complete studies have not yet been carried out. However, in such places it is very difficult to access Polish cultural goods because it is hard to decide which goods should be included in Polish heritage.

This division shows that in every country where Polish cultural goods can be found Poland faces a different challenge and has to use different instruments. In the next part of article, some of its activities in this regards will be presented.

#### 4. GETTING ACCESS TO POLISH HERITAGE ABROAD

The Supreme Audit Office indicates that after 1989 no comprehensive strategy for the protection of Polish heritage abroad was adopted in Poland, taking into account the long-term perspective, which would include priorities implemented in the long term, recommended forms of cooperation between individual ministries and public institutions. The assumptions of the policy of the Republic of Poland regarding the protection of the Polish national heritage abroad were contained in documents specifying the principles of cooperation with the Polish diaspora and Poles abroad and were mentioned in the integrated strategies in force until 2020 aimed at achieving the assumed development goals. According to the Supreme Audit Office, the lack of a long-term strategy for the protection of the Polish national heritage abroad made it difficult to conduct a comprehensive policy on the protection of the Polish national heritage abroad [Informacja o wynikach kontroli w sprawie ochrony polskiego dziedzictwa za granicą (Information on the results of the inspection on the protection of Polish heritage abroad), <https://www.nik.gov.pl/plik/id,14417,vp,16876.pdf>, p. 10].

Until August 1, 2016 there were three competent agencies:

- a) the Ministry of Culture and National Heritage;
- b) the Ministry of Foreign Affairs;
- c) Rada Ochrony Pamięci Walk i Męczeństwa (The Council for the Protection of Struggle and Martyrdom Sites) which finished work on August 1, 2016.

Article 1 of the Council for the Protection of Struggle and Martyrdom Sites Act states that the Council initiates and coordinates activities related to the commemoration of historical events and places as well as figures in the history of the struggle and martyrdom of the Polish Nation, both at home and abroad, as well as places of struggle and martyrdom of other nations close to the Polish Nation on Polish territory [Polish Journal of Law, 1988, No. 1, item 28, as amended]. After liquidation, the obligations of the Council have been transferred to the Ministry of Culture and National Heritage and the Ministry of Foreign Affairs. One of the greatest problems is the lack of the cooperation between these two ministries. This issue deserves a wider study as it also affects the restitution of Polish cultural goods. All in all, it is the result of the lack of a comprehensive heritage protection strategy [Informacja o wynikach kontroli w sprawie ochrony polskiego dziedzictwa za granicą (Information on the results of the inspection on the protection of Polish heritage abroad), <https://www.nik.gov.pl/plik/id,14417,vp,16876.pdf>, p. 10]. This is evident in the activities undertaken to enable access to such goods. Below, are some of the activities.

First is the “Atlas of Polish presence abroad” [*Atlas obecności polskiej za granicą* (*Atlas of Polish presence abroad*), [https://issuu.com/msz.gov.pl/docs/atlas\\_polskiej\\_obecnosci\\_za\\_granica](https://issuu.com/msz.gov.pl/docs/atlas_polskiej_obecnosci_za_granica)]. It was published by the Ministry of Foreign Affairs of the Republic of Poland. It was prepared based on the information gathered by Polish diplomatic and consular corps. However, the data presented in the “Atlas” are only estimates. The “Atlas” does not focus on the cultural heritage, but presents the countries where Poles were or are active. For example, it shows Polish graveyards and tombs of famous Poles in Italy. The “Atlas” is a guidebook indicating where to look for traces of Poles. The second option is to make the inventory and recording of Polish heritage. This, in turn, would allow to determine traces of Polish presence, which is of crucial importance. Without such an inventory, it would be more difficult for the next generation to find Polish cultural goods abroad. However, to complete this task the Ministry of Foreign Affairs should cooperate with the Ministry of Culture and National Heritage. The Ministry of Culture and National Heritage has unique, resulting from over twenty years of work, records of Polish material cultural heritage abroad, including records of Polish cemeteries and graves, which, nonetheless, was provided to the Polish society [*Informacja o wynikach kontroli w sprawie ochrony polskiego dziedzictwa za granicą* (Information on the results of the inspection on the protection of Polish heritage abroad), <https://www.nik.gov.pl/plik/id,14417,vp,16876.pdf>, p. 10]. This record consists of data about the Polish culture heritage arranged by localities, and consist of the information of about 2025 cities all over the globe; the archives have 70.000 units [*Informacja o wynikach kontroli w sprawie ochrony polskiego dziedzictwa za granicą* (Information on the results of the inspection on the protection of Polish heritage abroad), <https://www.nik.gov.pl/plik/id,14417,vp,16876.pdf>, p. 15].

Another activity includes the inventory, recording and digitalization. As it was mentioned, Poland has a large record of its cultural goods abroad, but they are not stored online, and access to them is very limited. Evidently, this is one of the most pressing tasks as it would allow to make the memory of these goods alive. Unfortunately, there is no country in the world which would be able to take care of its entire cultural heritage. Also, in Poland there is a serious problem with the financing of the endeavours to maintain the monuments in good condition [*Raport o zachowaniu zabytków nieruchomych w Polsce* (Report on the preservation of immovable monuments in Poland), <https://nid.pl/pl/Wydawnictwa/inne%20wydawnictwa/RAPORT%20O%20STANIE%20ZACHOWANIA%20ZABYTKÓW%20NIERUCHOMYCH.pdf>]. As a result, we cannot expect that all artefacts will be saved. This, in turns, proves the importance of the digitaliza-

tion. A good example of a database of Polish cultural goods is *Polonika* [Portal POLONIKA, [www.polonika.gov.pl](http://www.polonika.gov.pl)]. It is created by people all over the globe who identify items and then place them in the database run by the Department of Cultural Heritage Abroad and War Losses. *Polonika* includes information on all monuments of the Pope John Paul II erected all over the globe but also the works of Polish architects and sculptures, etc.

Financing restoration is also a very important part of the programs prepared by the Ministry of Culture and National Heritage but coordinated by the National Institute of Polish Cultural Heritage Abroad *Polonika*. This Institute was founded by the ordinance of the Ministry of Culture and National Heritage [Polish Official Journal of the Ministry of Culture and Cultural Heritage, 2017, item 86]. Paragraph 2 of the Statute of the National Institute of Polish Cultural Heritage Abroad *Polonika* [Polish Official Journal of the Ministry of Culture and Cultural Heritage, 2018, item 37 – attachment] stipulates that the scope of the Institute's activities includes:

- 1) collecting and disseminating knowledge about the Polish cultural heritage remaining outside the country;
- 2) conducting activities for the preservation of material traces of Polish culture abroad;
- 3) supporting, promoting and conducting research on Polish cultural heritage abroad;
- 4) building a positive image of Poland and its cultural heritage as an element of European and world heritage;
- 5) cooperation with institutions or organizations conducting activities in the field of protection of Polish cultural heritage abroad;
- 6) carrying out tasks commissioned by the Minister in the field of implementing international agreements, decisions of bilateral commissions and creating and updating strategies for the protection of Polish cultural heritage abroad.

In recent years, many programs have been initiated to finance projects that preserve Polish heritage abroad. The works are organized by non-government organizations which file a grant application, which is later evaluated by a special commission. The amount of the money allocated to the program limits the number of selected programs. Examples of such programs includes the renovation of the Holy Trinity Church in Olyka, Ukraine [Restauracja kolegiaty pod wezwaniem św. Trójcy w Ołyce (The restoration of the collegiate church of the Holy Trinity in Olyka), <https://www.dziedzictwo.org/projekty/restauracja-kolegiaty-pod-wezwaniem-sw-trojcy-w-olyce>]. The Church was devastated after the Second World War. The Polish Foundation of National Heritage started works there in 2013 and

in 2019 the work on the front façade of the church was completed. The works included all elements of the façade: the historic portal, a bas-relief depicting the coronation of Saint Mary, a bas-relief depicting the Lord, our Father, sculptures of the apostles, gilded clocks, sculptures of angels and a cross crowning the church. Five wooden rosettes that were part of the church were also preserved. In 2020 financial resources were granted to the publication of a catalogue of Polish 19<sup>th</sup> and 20<sup>th</sup> century sculptures from the collections of the Lviv National Art Gallery, the digitization of archival collections of the Piłsudski Institute in London, the collections of Józef Piłsudski and Stefan Mayer and intervention conservation works around the Mehoffer mosaic in the oldest part of the Armenian Cathedral in Lviv [Wyniki naboru programu „Ochrona dziedzictwa kulturowego za granicą” (Results of the grant program “Protection of cultural heritage abroad”), <https://www.gov.pl/attachment/9a85eaa0-d130-40d1-8308-9e215a638442>].

## 5. UNIVERSAL HERITAGE?

Discussing access to cultural heritage leads to the question as who should take care for non-national goods. Today, as Francesco Francioni underlines, the scholars of international and comparative law are split between two concepts of cultural property: those who view it as belonging to the nation and those who see it as part of the heritage of humankind [F. Francioni, 2013, p. 10–11]. Should we choose the second concept, the problem with access to cultural goods disappears because everyone should be able to have it, based on the same rules. This argument is very often held by post-colonial countries [Rapport sur la restitution du patrimoine culturel africain, <https://www.loniya.org/storage/pdf/1543398078.pdf>]. Illustratively, for many years now there has been a discussion regarding the ownership of the Parthenon Marbles taken from Athens and displayed at the British Museum in London as well as the Pergamon Altar at the Pergamon Museum in Berlin. In regards to such masterpieces, there is always a country, and very often more than one, which is ready to take care of them.

However, in many countries, including Poland, there is a problem with the so-called orphaned heritage. These goods are not treated as part of Polish cultural heritage and there is a serious problem with their preservation. Among such goods is for example the Orthodox Church in Kniazie or Stary Dzików and other Orthodox Church in the east of Poland. Some of these Orthodox temples are now used as Catholic churches (such is the case in Babice) but most are in ruins. It is also hard to demand from the government to take care of all of such goods as, like it was



mentioned above, Poland has a great deal of monuments. One of the solutions is to look for legal successors or foundations whose statutory task is to care for places of worship; this is what happened with a many synagogues in Poland<sup>3</sup>.

“Everybody’s property is nobody’s property” [Ciriacy-Wantrup, Bishop, 1975, p. 713] – this slogan expresses the great challenge that is faced by all countries. Today, we may be living in a global village, but nations are still very important. Even if one particular cultural good, as for example the Concentration Camp in Auschwitz, is treated as common property, there must be one country which is responsible for this place.

## 6. CONCLUSIONS

Getting access to the cultural heritage abroad is a very complicated issue. It is impossible to find one good solution. The most important task is to provide inventory, recording and digitalization. Thanks to them cultural goods can be preserved for future generations. The establishment of Polonika Institute, which focuses on cultural goods should be assessed positively, as it allows some centralization of activities. Also, for the masterpieces, which deserve to be saved, funding is of key importance, although it is often a problem. In Poland, where the number of national monuments is very large it is almost impossible to maintain them all in good condition. For this reason it is also difficult to demand that more funds are directed to activities abroad. In this context, the issue of the so-called orphaned heritage should not be overlooked as well as the need to properly secure and register it. All in all, much work has already been done, but there is still much to do.

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## CHAPTER VIII

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### International police cooperation and the protection of cultural property

#### SUMMARY:

The main objective of this article is to provide a suitable academic answer for the following research questions: What is “Art Crime”? Which are the best available legal tools to prevent and to enforce this increasingly concerning criminal phenomenon? As a result to this research, International Police Cooperation presents itself as an optimal measure against this type of illegal activity. In addition, this research will analyse, assess and establish some legal and doctrinal foundations of “Art Crime” and also of International Police Cooperation measures used to counter the phenomenon of “Art Criminality”. To this end, knowledge from different sources were gathered: doctrine, media and online sources and scientific articles with opinions from experts.

The article consists of the following parts: the Introduction; Art Crime: a Matter for Global Concern (first chapter); International Police Cooperation as a Legal Tool against Art Criminality (second chapter); and Conclusions. The first chapter briefly presents some data on “Art Crime” and its transnational aspects. The second chapter analyses countermeasures in international law to the aforementioned illegal practices; International Police Cooperation, which derives from the legal institutes of International Legal Cooperation in Criminal Matters. Finally, some considerations and conclusions are presented in order to contribute to strengthening the discussion of this topic.

**KEY WORDS:** art crime, international law, international police cooperation

*“Art of the past has become victim to unprecedented pillage, theft and destruction. Temples in obscure corners of the world are torn apart so that chunks of stone can be brought to museums in ‘civilized’ centers”*

Bonnie Burnham [Chappell, Hufnagel, 2019 p. 3; Burnham, 1975, pp. 13–14].

#### 1. INTRODUCTION

Zygmunt Bauman taught that the complex networks of our societies and relations created a “fluid” reality. We now live in a permanent and unavoidable “state of Crisis”; where globalized issues like criminality, civil wars and ideological revolutions

take place at the same time and affect everyone on the planet, regardless of borders and distances<sup>1</sup> [Bauman, 2016, p. 10].

In this context, the criminal aspects of “Art Crime” are a cause of great concern. A criminal justice system’s response to the protection of cultural artefacts includes several “nuances”. Therefore, the focus of this research is based on the main features related to police investigative and cooperative measures used to prevent and enforce the phenomenon of “Art Crime”. It seems that this specific form of illegal activity has an underestimated importance, especially if we compare it with other forms of activities more commonly enforced. Hence, there is a need for greater concern (to both public authorities and private citizens and organizations) when it comes to the protection of works of art throughout the globe.

Accordingly, the following research questions were defined in order to address this topic and to validate possible conclusions: Is it possible to assess the knowledges on the phenomenon of “Art Crime”?; and What is the possibility to use legal measures provided by the institutions connected with International Police Cooperation (henceforth abbreviated as “IPC”) to counter this underestimated criminal phenomenon?

The methodology used to obtain sources in order to bring forth an academic and pragmatic sense to this topic was developed as follows: A dialectic as a method of approach; a monographic (dissertation) as a method of procedure; and bibliographic as a method for research technique (according to materials and instruments prepared by scientists, scholars and media sources).

Throughout this article the two research questions mentioned in the abstract will be answered in two chapters: What is “Art Crime”?; and Which are the best available legal tools to prevent and enforce this increasingly concerning criminal phenomenon? The first chapter will bring forth an overview of “Art Crime”, including some statistics. The second and final part of this work will briefly delve into the legal foundations<sup>2</sup> of International Police Cooperation tools used to counter this criminal phenomenon.

## 2. ART CRIME: A MATTER FOR GLOBAL CONCERN

The first solid legal conceptions of crime according to the law came only by the end of the Middle Ages, with Renaissance thinkers like Cesare Bonesana di Beccaria

1 According to the author: “We must get used to living in a crisis state, just as well as we are used to coping with so many adversities which were imposed on us by the evolution of time: pollution, noise, corruption and, above all, fear. (...) crises are here to stay” [Bauman, 2016, p. 10].

2 What does the word “foundation” mean? It comes from the Latin *fundamentum* (also according to the German terms *Grund*, *Begründung* and *Grundlage*) and describes something that serves as basis or as a “cornerstone” [Enciclopedia Mirador, 1975, p. 5017].

[Beccaria, 2011, p. 20]. However, the definition of crime that is used today dates to the 19<sup>th</sup> century as an illicit (against the law) activity, which deserves strict state regulations and legal guarantees.<sup>3</sup>

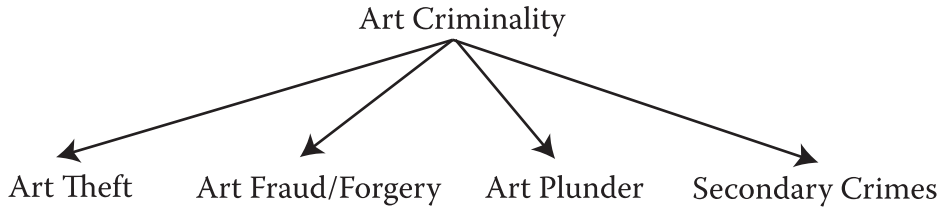


Fig. 1. An overview of the phenomenon of “Art Crime”  
(Image developed by the author of this article)<sup>4</sup> [Chappell, Hufnagel, 2019 p. 11].

Currently, criminal manifestations that cause harm to society in any part of the globe (for example, “diffuse criminality” practices such as drug trafficking, money laundering, terrorism, paedophilia practiced in a virtual environment, etc.) operate in an integrated way, via networks, without borders and with great celerity and flexibility. As a consequence, the impunity arising from the complexity of these criminal endeavours can lead to the destabilization of social relations and, even worse, can destabilize states<sup>5</sup> [“The Economist”, 2017]. Thus, the criminal justice system should act similarly: via networks with border limits attenuated and also with utmost celerity and flexibility [Neves, 2019 p. 35].

Following this line of thought, “Art Crime” is also a transnational illicit endeavour that causes harm to society all over the world [<https://www.interpol.int/News-and-Events/News/2020/101-arrested-and-19-000-stolen-artefacts-recovered-in-international-crackdown-on-art-trafficking>]<sup>6</sup> and “As long as there will be a demand for those objects, there will be people looting them” [Desmerais, 2015, p. 9]. However, there are other factors which add intricacies to this topic, namely, the need for a multidisciplinary approach and the participation of specialists from unique

3 *Nullum crimen, nulla poena sine praevia lege poenali.*

4 According to the doctrine of D. Chappell and S. Hufnagel, “Art Crime” can be divided into three different types: Art Theft, Art Fraud/Forgery and Art Plunder. As for the “secondary crimes” mentioned in this figure, the author of this research believes that such type of criminality has to do with illicit acts which take place after the main crime occurred. For instance: money laundering (large sums of money can be obtained with the illegal commerce of stolen works of art), illicit trafficking of goods etc. [Chappell, Hufnagel, 2019 p. 11].

5 For instance, the so-called “failed states”: Venezuela, Syria, etc. [“The Economist”, 2017].

6 This Police operation only proves that “Art Crime” has gone global, with the direct involvement of organized groups in several countries [<https://www.interpol.int/News-and-Events/News/2020/101-arrested-and-19-000-stolen-artefacts-recovered-in-international-crackdown-on-art-trafficking>].

areas of expertise. Police agents are not enough to counter this phenomenon. In fact, a “criminological awakening” [Chappel, Hufnagel, 2019 p. 11] is needed when dealing with this very specific form of illegal activity. In Brazil, for example, several institutions are involved in the *persecutio criminis* measures against “Art Crime”: Police, *ICOM*<sup>7</sup>, the archdioceses, private companies (e.g. eBay, Facebook [<https://www.bbc.com/news/world-middle-east-53140615>], etc.), revenue/fiscal agencies, museums, antiquaries, dealers/*marchands*, mail and delivery services (e.g. FEDEX, UPS), galleries, non-governmental organizations and other actors [Silva, 2012, p. 10].

Two main coefficients contribute to the great difficulties involving the criminal investigative procedures related to “Art Crime”: the lack of reliable data and its complexity. According to the US Federal Bureau of Investigation of the United States of America, the “black market” for art theft is estimated to be between four billion and six billion US dollars; and the recovery rate of such items is between 2% and 6%. If it is a high-value cultural artefact, the recovery rate is 25% after 25 years [Chappel, Hufnagel, 2019, p. 11]. There are persistent examples of major thefts of cultural artefacts, especially if they are portable [<https://www.fbi.gov/investigate/violent-crime/art-theft>]. The above estimate does not include unreported thefts.

Therefore, the “dark figures” of “Art Crime” are key to understanding its context, according to France Desmerais: “It is surprising, to say the least, that illicit traffic in cultural objects should have been officially recognized for decades – if not a century – but that no organization gathered official global statistics to illustrate the extent of the problem. Many numbers are brought forward by different expert organizations to quantify the trade, in mass or in financial value. Some of those numbers are astronomical. Yet, none can be confirmed by official empirical data. While the INTERPOL [Neves, 2019, p. 388]<sup>8</sup> Expert Group on Stolen Cultural Property concluded, in June 2015, that data gathering and systematic research are of high relevance for combatting the illicit traffic in cultural items, it remains impossible, to this day, to precisely rank illicit traffic in cultural objects so as to measure it to other types of transnational crimes” [Desmerais, 2015, p. 9].

As for the complexity of the issue, in order to briefly illustrate this, Günther Wesel<sup>9</sup> explains it via the so-called “attic tactic” used by suspects and criminals

7 International Council of Museums – an NGO that was created in 1946 by Chauncey J. Hamlin. Its headquarters are in Paris/France. Site available at: [<https://icom.museum/en/>]

8 The International Criminal Police Organization is an International Organization with 194-member States and it was founded by Police agents. Although created in 1923, INTERPOL only drafted its constitution at the 25<sup>th</sup> session of the Vienna General Assembly, in 1956. INTERPOL is the largest and most-active International Organization that dedicates itself to counter criminality [Neves, 2019, p. 388].

9 In other words: such cultural artifacts were probably looted and illegally transported (trafficked) to that auction [Wesel, 2015, p. 9].

to auction looted cultural objects: “Thanks to eBay and the numerous presumed finds in cellars and lofts, the ‘attic tactic’ has now somewhat fallen out of favour, says Neil Brodie, the Glasgow-based archaeologist and crime researcher. However, England is still a dream location for well-constructed provenances. That is due most of all, he explains, to the country’s colonial past. ‘Because of the British Empire, such indications of origin are very popular: *Acquired by the father of the owner while on military service in Egypt*, or *acquired by the father of the owner while working in Yemen as an engineer*, or *acquired by the father of the owner while working on construction of a railway in Iraq*. And all of that is credible because there were Britons everywhere in positions. Of course, it is all made up, but it is credible.’ In the spring of 2015, I came upon precisely such a fabricated origin a small auction house in Berlin offered – among the hundreds of items in its catalogue – seven finds from excavations in North Africa and the Middle East. Five items originally came from Egypt (all of them, according to the information, were roughly 3,000 years old), one from Afghanistan, and one from Iran (both roughly 2,000 years old). All the objects, according to the catalogue, ‘were the *property of an English colonial officer*. When I made enquiries at the auction house, I was assured that the objects have long been in the family’s possession. They have been brought in by an Englishman whose grandfather had travelled the world and returned with things from where he had been. Unfortunately, no paperwork existed. Some of the pieces (two objects remain unsold) attain astonishingly high prices above their estimated value, and the new owner is satisfied with their fine provenance: *private English collection prior to 1970, acquired (in good faith) at auction in 2015*” [Wesel, 2015, p. 9].

The phenomenon of “Art Crime” has many sides: Art Theft, Art Fraud/Forgery, Art Plunder and secondary crimes. Art Fraud/Forgery affects the integrity of the art market, as fake and forged paintings, sculptures and other works are “[...] also ripe for fraudsters to ply their trade” [Chappell, Hufnagel, 2019, p. 15]. Non-authentic art requires a complex investigation, with a combination of evidence from experts in arts and forensics, including information about the origins of the object [Chappell, Hufnagel, 2019, p. 15]. Art Plunder consists of looting, pillaging, trafficking or damaging cultural artefacts and structures that are usually located in the “ancient world” [Boland, 2019, p. 463].

Finally, Art Theft [Polk, 2020; <https://www.britannica.com/topic/art-theft>]<sup>10</sup> is a criminal activity involving the theft of art or cultural property, including paint-

<sup>10</sup> The author and art researcher Kenneth Polk also explains some interesting specifics of the reality of “Art Crime”: “When the movement of illegal art is examined as a criminal market, it is apparent that it differs from markets for goods that are illegal to produce, such as counterfeit money or illegal drugs.



ings, sculptures, ceramics, and other objects of art and is usually identified (and recorded by state authorities) as larceny, burglary, house breaking or robbery practices. It seems that the theft of works of art is the main issue when it comes to “Art Crime”: more than 50,000 unique cultural artefacts are catalogued in INTERPOL’s Stolen Works of Art database [<https://www.interpol.int/en/Crimes/Cultural-heritage-crime/Stolen-Works-of-Art-Database>]. Investigating such specific and intricate criminal endeavours is not an easy task. It requires a large amount of human resources including specialized units within the police and heavily trained agents with a vast array of cultural knowledge.

All the aforementioned factors reinforce the dynamic environment in which “Art Crime” develops. Since such forms of criminal activity usually incorporates a transnational aspect, international legal actors and institutions must operate in a common, integrated environment via rapid sharing of information. Hence, the importance of International Police Cooperation. This crucial legal institution to counter criminal activities with transnational consequences will be analysed in the next part of this research.

### 3. INTERNATIONAL POLICE COOPERATION AS A LEGAL TOOL AGAINST ART CRIMINALITY

As stated above, “Art Crime” today has acquired a truly a global status and requires true protection of important cultural artefacts by state and international legal mechanisms – related to criminal matters – that work via cooperative efforts between each other and with other international organizations (e.g. INTERPOL, European Union, etc.). There are multiple institutions, channels and legal mechanisms that – if and when properly operated – can provide efficient, fast and optimal answers against transnational [Chappell, Hufnagel, 2019, p. 109]<sup>11</sup> practices of art theft and trafficking of cultural artefacts on the global “black market” of arts.

States face serious difficulties, not only in investigating and to prosecuting crimes within their borders, but also searching for criminals in other states and when managing international cooperative efforts [Byrne, 2013, pp. 64–68]. They face a very complex web of legal, political and geopolitical interests. Nevertheless,

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To realize their full value, works of stolen art must move through some portal to the legitimate market—thus, the movement of illegal art often will have a half-illicit, half-licit character” [Polk, 2020].

11 Can the phenomenon of “Art Crime” be also considered a form of transnational organized criminality? The doctrine of Duncan Chappel and Kenneth Polk indicates cases where Chinese gangs were responsible for organizing thefts of works of art in the United Kingdom [Chappell, Hufnagel, 2019, p. 109]. The author Neil Brodie also addresses this topic and shows the so-called “Dubai Network”, where organized groups trafficked Egyptian cultural artifacts to the USA. [Brodie, 2019, p. 439].

good alternatives exist: International law provides a vast array of institutions related to International Legal Cooperation in Criminal Matters (henceforth abbreviated as “ILC in Criminal Matters”) which facilitate the formation of a “unison language” [Neves, 2016, p. 388] between different criminal justice systems.

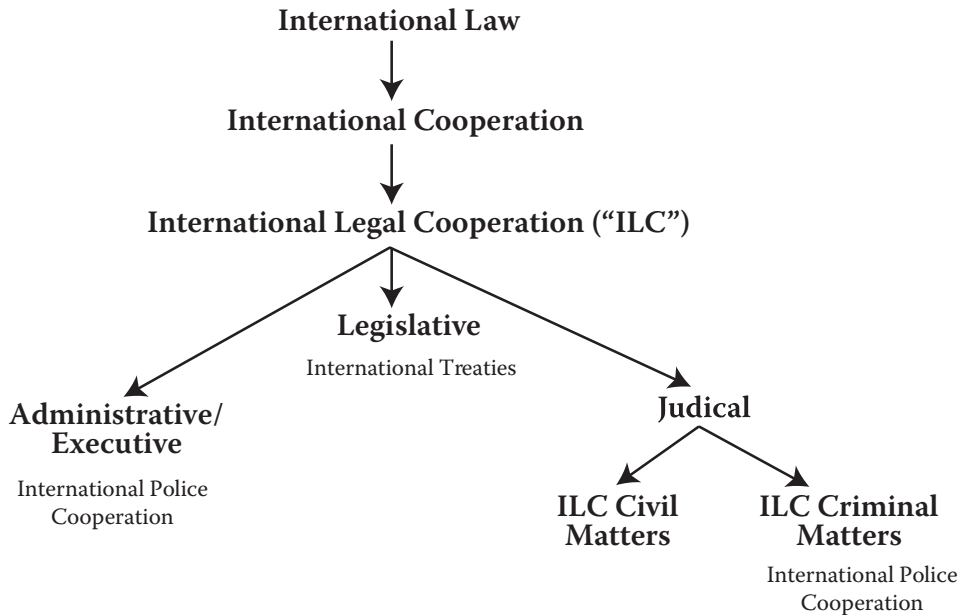


Fig. 2. Location of the legal framework related to International Police Cooperation [Neves, 2019, p. 35]. Image developed by the author of this article.

The term “International Cooperation” can be defined as acts of communication between citizens, organizations and/or states (and their institutions) in an international relations environment aiming at common goals or interests [McClellan, 2012, p. 200]. Fábio Ramazzini Bechara explains that International Legal Cooperation involves cooperation according to the law of each state and also to international law. In other words: a state operates the exchange of extraterritorial legal measures demanded by other state’s judiciary, since the latter has limited powers (as consequence of the sovereignty attribute) [Araújo, 2012, p. 33]. According to Professor David McClellan: “International cooperation has become a normal and well-accepted feature in both civil and criminal matters; but it was not always so. Reasons are not difficult to find (...). It has been, until recent times, strangely neglected. Why is this so? Penal Laws of foreign countries are strictly local, and affect nothing more

than they can reach. The courts of no country execute the Penal Laws of another. No society takes concern in any crime, but what is hurtful to itself (...). There is a growing realization that organized crime, with its profits from drug-trafficking (...) with political leaders able to steal with impunity (...) can threaten the economic stability and security of whole nation states. States are still proudly sovereign, so that, for example, some refuse to consider the extradition of their nationals no matter the alleged offence, but there is now a willingness to share resources in the fight against organized crime. (...) There's the sad reality of drugs, terrorism and the growth of highly organized global criminal syndicates with resources greater than states" [McClean, 2012, p. 200].

There are, basically, three forms of ILC institutes: in Administrative matters (which involves, in general, the executive branch of states, e.g. International Police Cooperation); in Legislative matters (which involves, in general, the parliamentary branch of states, e.g. international treaties); and in Judicial matters (which involves the judicial branch of states, IPC also included) [Bechara, 2011, p. 42].

In the field of ILC in legislative matters, two important international conventions address Art Crime: the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (signed in Paris, in 1970, with 140 member states); and the International Institute for the Unification of Private Law (UNIDROIT) Convention on Stolen or Illegally Exported Cultural Objects (signed in Rome, in 1995, with 48 member states). The former "[...] mentions the possibility for relevant organizations to conduct studies on matters related to the illicit movement of cultural property. Looting and illicit traffic represent one of the global challenges yet to be faced, for which a research and data gathering body such as the International Observatory in Illicit Traffic in Cultural Goods is needed" [Desmerais, 2015, p. 9]. While the latter is still "[...] insufficiently ratified" [Desmerais, 2015, p. 9].

In relation to International Legal Cooperation, when it comes to Judicial matters, it can be divided in civil matters (e.g. the Brazilian system for child adoption by foreigners) and in criminal matters. According to Professor Raúl Cervini, Judicial ILC in Criminal matters can be defined as:<sup>12</sup> "Conjunto de atividades processuais, regulares, concretas e de diversos níveis, cumpridas por órgãos estatais/jurisdição-

12 "Set of (legal) procedural activities, concrete and regular, including several levels, operated by State and Judicial organs, with criminal jurisdiction, who belong to different sovereign States, with a convergence to an international level, in order to reach the same goal, which is to develop (prepare and achieve) a main criminal procedure, according to strict legal guarantees, depending on the degree of cooperation required. It involves a citizen bearer of legal rights, a demanding State and a demanded State. ILC is fulfilled when a State, which does not have *ius imperium* powers over another State – but

ais (competentes) em matéria Criminal, pertencentes a distintos Estados soberanos, que convergem (funcional e necessariamente) em nível internacional, na realização de um mesmo fim, que não é senão o desenvolvimento (preparação e consecução) de um processo (principal) de natureza Criminal, dentro de um estrito marco de garantias, conforme o grau e projeção do auxílio requerido. Envolve um Estado requerente, um Estado requerido e um cidadão portador de direitos e garantias (...). A Cooperação Jurídica Internacional se concretiza quando um Estado, o qual não tem o poder de império senão dentro de seu território, recorre ao auxílio que puder lhe prestar outro Estado por meio de suas atividades jurídicas” [Cervini, 1994, p. 100].

International Police Cooperation can be explained as a set of measures of International Legal Cooperation in Criminal Matters (Administrative<sup>13</sup> or Judicial, or both). It is an interaction, with purpose, between two or more police institutions (including private sector organizations which aim at security issues) with the objective of sharing criminal intelligence databases, conducting investigations and, finally, apprehending suspects (or criminally convicted fugitives). It is a dynamic communication where data is shared through international borders and geopolitical frontiers. It is a subdivision of International Legal Cooperation in Administrative matters and also in Criminal (Judicial) matters, regulated both by national law and international law. As a consequence, police agents work in an integrated, more efficient and better organized fashion, once the influx of information allows a general picture of the crime (or person) investigated<sup>14</sup>.

Since “Art Crime” today is – as a rule – transnational, the speed of the propagation of information regarding such illicit practices are key to countering them. Hence, Police agents involved in such investigative procedures can use, for instance, the 24/7 network of information from INTERPOL and spread the *modus operandi* of a recent stolen cultural artefact to all neighbour countries, with photos and details. This is the formal side of International Police Cooperation. But the principle of celerity [Neves, 2019, p. 46]<sup>15</sup> – related to IPC – allows for an even faster

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only within its boundaries – resorts to another sovereign State through the legal system (both national and international)” [Cervini, 1994 p. 100].

13 Since not always the Judiciary is involved in a Police procedure.

14 The following doctrine in this matter is recommended: [Lemieux, 2010; Cervini, 1994; Neves, 2019].

15 The Principle of Celerity can be extracted from the international legal framework of INTERPOL. This value derives from the Principle of Due Process. This principle is implicit in INTERPOL’s constitution, on articles 2 and 31 (“Article 2 Its aims are: 1- To ensure and promote the widest possible mutual assistance between all criminal police authorities within the limits of the laws existing in the different countries and in the spirit of the »Universal Declaration of Human Rights«; 2- To establish and develop all institutions likely to contribute effectively to the prevention and suppression of ordinary law crimes. Article 31 – National Central Bureaus: In order to further its aims, the Organization needs the constant and active co-operation of its Members, who should do all within their power which is

measure: depending on the circumstances of the case, a police agent can directly contact his/her partners in other countries via informal police networks [Bayer, 2010, p. 10]<sup>16</sup>. For instance: a swift exchange of information between police agents is key to tracking with utmost speed transportation services, highway patrol, and also money transfers that are usually involved in this type of activity. After all, informal networks of contacts between police agents are also necessary as they are faster, can be more efficient and more effective, for these grids are an immense reservoir of living information. Below, in the last part of this article, we present some conclusions and final considerations in order to further contribute to this important topic.

#### 4. CONCLUSIONS

Today, “Art Crime” is a criminal phenomenon that is vested with transnational effects and consequences, generating damage all over the world, since the opening of frontiers and national economies is the “new normal”. Unfortunately, this criminal phenomenon is underestimated and under evaluated by both public authorities and private entities. Its dynamics are not fully understood and the environment in which it develops is very specific.

According to the research guidelines mentioned above, “Art Crime” is an illicit endeavour that presents mainly two challenges: the lack of data and complexity. The former needs to be addressed urgently, for no crime can be effectively and efficiently contained unless the actors that counter it are able to acquire the “big picture” of such phenomenon. The latter is of utmost importance, as police agencies (and its criminal justice system’s counterparts) will never be able to deal alone with this type of crime. Hence, a multidisciplinary approach is required. And this means that – besides investing in qualification programs for the police – private entities should work side by side with police agents.

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compatible with the legislations of their countries to participate diligently in its activities”) [Constitution of the International Criminal Police Organization-INTERPOL, I/CONS/GA/1956 (2017)]. These provisions demand that member States of this International Organization should dedicate (all of) their efforts to promote rapid International Police Cooperation around the globe. In fact, there is no point in a delayed response by State institutions when it comes to tackling transnational organized criminality [Neves, 2019 p. 46].

16 According to Michael D. Bayer: “Police can and do cooperate with one another internationally to combat transnational crime. Organizations such as INTERPOL and EUROPOL exist for this purpose – but those organizations, while valuable, bring with them the burdens and inefficiencies of their own diplomatic formalities, rules, regulations, and procedures along with accompanying bureaucracies of participating member governments. Informal policing has been around for even longer than formal arrangements, and evolved as an efficient means to deal with the internationalization of crime” [Bayer, 2010 p. 10]. [Furthermore: Neves, 2019, p. 176]. Informal Police cooperative networks are also known as “shortcuts”.

Finally, when it comes to “Art Crime” with transnational consequences (which seems to be the rule), international organizations (within the framework of international law) such as INTERPOL and the European Union (via its agency EUROPOL) are key to deterring this type of crime. In fact, International Police Cooperation practices can provide an optimal answer to this matter, for the speed and flexibility of its formal (and informal) channels of information allow for an integrated, unison language and flow of criminal data amid all police agents throughout the globe that strive to protect cultural heritage and cultural artefacts.

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#### LIST OF FIGURES:

Fig.1. An overview of the phenomenon of “Art Crime”.

Fig.2. Location of the legal framework related to International Police Cooperation.

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## CHAPTER IX

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Ivan Franko National University of Lviv

### **Protection of monuments and their territories in Ukraine: The issue of ownership**

#### **SUMMARY**

This article covers the issue of ownership of monuments and their territory in Ukraine. Monuments can belong to the state, local community, or a private person. However, the law contains exceptions, and special legal rules do not allow for the privatization of monuments. The author pays attention to the importance of concluding protection agreements, defining the responsibilities of the owners and the list of works that need to be done by them. The issue of permits for archaeological research or any type of work on land plots of historical and cultural significance has been described. The article analyses the principles of termination of rights to land plots for historical and cultural purposes and liability for violations in their use or other violations of the legislation on protection of cultural heritage.

**KEY WORDS:** cultural heritage, monuments, ownership, historical sites

#### **1. INTRODUCTION**

Ukraine is in the heart of Europe, where different cultures and nations meet. The history of Ukraine may begin with Kyivan Rus', which existed from the late 9<sup>th</sup> to the mid-13<sup>th</sup> century. An important step was the adoption of Christianity in 988, which contributed to further developing of the state. The church had a positive influence on the spreading of literacy, development of art, and architecture. The state finally fell to the Mongol invasion of the 1240s. However, northern and western Ukraine remained independent. The principality of Galicia-Volhynia was formed on the west and existed till 1349. Lviv became an important centre where different cultures and ethnic groups met, and urban culture was developing.

For the next 300 years, Left-Bank Ukraine was under the influence of Moscow and Right-Bank Ukraine under Poland and Lithuania's influence. As a result of the national liberation war or the so-called Cossack rebellion of 1648–1657, part of Ukraine became independent. However, in 1678 Ukraine lost its independence



and its territory was again divided along the Dnieper river. After the partitions of Poland, the west of Ukraine fell under the control of the Austro-Hungary Empire, with the rest becoming a part of the Russian Empire.

In the 20<sup>th</sup> century, there were several attempts to restore Ukraine's independence, but eventually, Ukraine became part of the USSR. Ukraine became an independent state in 1991 and began to create its own history. However, the struggle for independence is still ongoing. In March 2014, the Russian Federation annexed Crimea and started a war in the eastern part of Ukraine. Ukraine has faced new challenges, also in the field of cultural heritage protection<sup>1</sup>.

Cultural heritage reflects the richness and diversity of world history and culture. At the same time, the preservation and protection of cultural heritage is an essential and challenging task. Such protection includes not only the legal element but also the financial, organizational, technical, as well as the general public awareness of the need to preserve cultural heritage.

State policy in the preservation of immovable cultural heritage should be carried out comprehensively and simultaneously with the policy in the field of environmental protection, national culture, sustainable development of settlements, and other issues. It is crucial not only to preserve such objects but also to promote them, create appropriate information resources and infrastructure.

Nearly 130,000 cultural heritage sites are found in Ukraine with 9,562 monuments included in the State Register of Immovable Monuments of Ukraine. Six unique cultural sites are included in the UNESCO World Heritage List. The creation of an effective system of control over the state of protection and preservation of cultural heritage sites, protection of traditional character, and protection of historical and cultural lands is one of the critical questions of the Concept of State Policy of Reforming the Protection of Immovable Cultural Heritage<sup>2</sup>.

## **2. NATIONAL LEGISLATION ON THE MONUMENT'S PROTECTION**

With the Constitution's adoption in 1996, Ukraine has committed to promoting the consolidation and development of the Ukrainian nation, its historical consciousness, traditions, and culture. In addition, particular articles of the Basic Law define the legal basis for the protection of cultural heritage. Cultural heritage is protected by law (art. 54 of the Constitution). The state ensures the preservation of historical monuments and other objects of cultural value,

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1 For more details about history of Ukraine check N. Davies [Davies, 1996].

2 The information from The concept of state policy of reforming the protection of immovable cultural heritage.

takes measures to return to Ukraine the cultural values which are outside of the country.

Until 2000, the Law of the Ukrainian Soviet Socialist Republic titled "On the Protection and Use of Historical and Cultural Monuments" from July 13, 1978, was in force in Ukraine. This law was quite detailed, containing definitions and types of monuments, regulated public administration, liability for violations of the law, etc. The list of monuments was created for their registration and protection. The procedure of maintaining the Register of the monuments was determined by the Instruction on the Procedure for Registration, Preservation, Maintenance, Use, and Restoration of Immovable Historical and Cultural Monuments No. 203 of May 1986, approved by the Ministry of Culture of the USSR. This procedure, with some minor changes, was in force in Ukraine until March 11, 2013.

The above-mentioned Law of the Ukrainian SSR of 1978 was the basis for the first, in independent Ukraine, legal act in the field of culture protection: the Fundamentals of the Ukrainian Legislation in the Sphere of Culture. Issues of protection, preservation, and use of cultural heritage were fully outlined and covered in this law [Kurylo, 2003, p. 56]. However, this law defined the general principles of cultural development, and the principles of policy implementation. Most of the norms were declarative, no mechanisms for the preservation and protection of cultural objects were established.

On June 8, 2000, the Law of Ukraine titled "On Cultural Heritage Protection" was adopted (hereinafter referred to as the LCHP). This law has been amended many times and is still in force today. The preamble states that this law regulates legal, organizational, social, and economic relations in the field of cultural heritage protection in order to preserve it, use cultural heritage sites in public life, and to protect the traditional nature of the environment for present and future generations.

According to article 1 of the LCHP, cultural heritage objects are original landmarks, buildings, complexes (ensembles), their parts, related movable objects, as well as territories or water objects (underwater cultural and archaeological heritage sites), other natural or human-made objects, regardless of the state of preservation, which have an archaeological, aesthetic, ethnological, historical, architectural, artistic or scientific value. Therefore, this law defines the legal regulation of tangible and immovable cultural heritage and its territories.

The new State Register of Immovable Monuments of Ukraine (hereinafter referred to as the Register) was established by this law. The old list (the Register of monuments of the Ukrainian SSR) is still in force, but it was not incorporated into the Register. Therefore, one needs to check both lists to find out whether a building is a monument or not.

Furthermore, there are several laws which are related to the use and protection of immovable monuments and their natural environment: On Natural-Reserved Fund of Ukraine (1992), On the Principles of Town Planning (1992), (1993), On Museum and Museum Business (1995), On Architectural Activity (1999), On Export, Import and Return of Cultural Values (1999), On Protection of Archaeological Heritage (2004) (hereinafter referred to as the LAHP), On Settlement Improvement (2005).

**a. The Definition of the monument in Ukrainian legislation**

According to article 1 of the LCHP, a cultural heritage monument (hereinafter – monument) is an object of cultural heritage which is inscribed in the State Register of Immovable Monuments of Ukraine. The Register consists of the monuments of national and local importance. The Procedure for Determining the Categories of Monuments was approved by the Resolution of the Cabinet of Ministers of Ukraine No. 452 of May 22, 2019.

A monument of national importance should meet one or more of the following criteria:

- Has a significant impact on the development of the country's culture;
- Is directly related to historical events, beliefs, lives, and activities of people who have made a significant contribution to the development of national culture;
- Represents a masterpiece of genius or is a stage work of outstanding architects or other artists;
- Is a work of a vanished civilization or artistic style.

A monument of local importance should meet one or more of the following criteria:

- Has an impact on the development of the culture of a community or region;
- Is related to historical events, beliefs, lives, and activities of people who have made a significant contribution to the development of the culture of a community or region;
- Is the cultural heritage of a national minority or regional ethnic group.

Each monument receives the status of a monument of architecture, archaeology, history, monumental art, urban planning, garden and park art, landscape art or science and technology.

By types, objects of cultural heritage are divided into:

- Constructions (works): works of architectural art, sculptures, and monumental painting, archaeological sites, caves with evidence of human activity, buildings

or apartments with evidence about prominent historical events, life and activities of well-known persons;

- Complexes (ensembles): topographically defined set of separate or connected objects of cultural heritage;
- Remarkable places: valuable archaeological, aesthetic, ethnological, historical, architectural artistic or scientific natural-anthropogenic zones or landscapes.

#### **b. The definition of historical and cultural lands in Ukrainian legislation**

Monuments are related to the territories in which they are located. According to the Land Code of Ukraine, the lands of Ukraine include all lands within its territory, including islands and underwater territories, which are divided into categories according to their primary purpose (Art. 18 of the Land Code of Ukraine). In Art. 19 of the Land Code of Ukraine lands of historical and cultural purpose are defined as a sole category. Special legal rules are applied to lands of historical and cultural purposes, as well as to other categories of lands.

According to article 34 of the Law of Ukraine on the Protection of Cultural Heritage, lands of historical and cultural purpose include lands on which monuments, their complexes (ensembles), historical and cultural parks, historically protected areas, protected archaeological sites are located. However, in article 53 of the Land Code of Ukraine, the list of objects is more comprehensive and includes open-air museums and memorial museums. Responsible authorities use the legal rule of the Land Code of Ukraine<sup>3</sup>. However, the main object is always a monument since historical and cultural parks, historically protected areas, protected archaeological sites, open-air museums, and memorial museums cannot be created without the monument.

The definition of historical and cultural lands is not suitable because it does not contain the characteristics of these lands. This legal rule is only a list of cultural heritage sites located within these territories. Protection zones should be established around monuments in order to protect the traditional environment. These are the following types of protection zones: building regulation zones, protected landscapes zones, protection zones of the archaeological layer (art. 32 of the LCHP).

Furthermore, historical areas of the settlement are to be determined in historical cities. Such areas include part of the settlement that has preserved the monuments, urban planning and forms of construction, which comes from previous periods of development, typical of particular cultures or time (article 1 of

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<sup>3</sup> This conclusion is made from analyses of the concept of state policy of reforming the protection of immovable cultural heritage.

the LCHP). The special legal regulation and borders are to be set up for each historical area of the settlement. A special regulation aims to ensure the historical nature of the environment of the settlement and the preservation of cultural heritage sites [Bevz, 2012, p. 7].

In addition, in accordance with paragraph 2 of article 34 of the LCHP, the establishment of protection zones and historical areas of settlements cannot be grounds for property rights deprivation, but owners are to follow rules which are defined for lands of historical and cultural purpose. Therefore, protection zones and historical areas of settlements do not belong to the category of lands of historical and cultural needs. However, certain restrictions and obligations apply to the owners or users of these territories.

Lands of historical and cultural purposes play a crucial role in the preservation of the cultural heritage site (prevention of its destruction or damage) and its land lot itself. Moreover, these territories are often used for tourism, carrying out research, archaeological excavations, etc.

### **c. System of administration of cultural heritage**

Chapter 2 of the LCHP is devoted to state management in the sphere of cultural heritage protection. Public administration in the field of cultural heritage protection is entrusted to the Cabinet of Ministers of Ukraine and other specially authorized bodies for the protection of cultural heritage.

The list of other specially authorized bodies for the protection of cultural heritage includes:

- Central bodies of executive power in the sphere of cultural heritage protection;
- A body for the protection of the cultural heritage of the Autonomous Republic of Crimea;
- Regional, district, Kyiv and Sevastopol city state administrations (local executive authorities of the state);
- Executive bodies of village and city councils (local government).

The Ministry of Culture and Information Policy of Ukraine is authorized to be the central body of executive power in protecting cultural heritage. It is responsible for public policy in the fields of cinematography, restoration, the preservation of national memory, interethnic relations, religion, protection of the rights of national minorities, the arts, protection of cultural heritage, museums, export, import and the return of cultural property. However, on the regional level, special bodies for protection of cultural heritage in regions and cities are practically non-existent. They have been set up and function only in the city councils of Kyiv, Odessa, and Lviv.

### 3. OWNERSHIP OF MONUMENTS AND THEIR TERRITORIES

A monument may belong to a state, local community, or private person (art. 17 of the LCHP). There are two aspects to state ownership of land. The first is a set of mandatory rules of conduct (rules of law) established by the state, which should regulate the relationship of state ownership of land. The second as a property right itself, which means to own, use, and dispose of a land lot [Shulha, 1998, pp. 84–85]. The local community can own, use and dispose of the property belonging to it at its discretion and in its interests, both directly and through local self-governmental bodies. Monuments and their territories may belong to citizens of Ukraine, foreigners, or a person without citizenship, as well as to Ukrainian or foreign legal entities. Certain exceptions from the main rule exist for some types of monuments.

First, archaeological monuments belong to the state. All archaeological sites, including underwater sites, as well as archaeological artefacts, also belong to the state. Lands on which archaeological sites are located belong to the state or must be bought by the state. This rule is not applicable to land plots where such archaeological sites as fields of historical battles are situated (art. 17 of the LCHP). The special legal protection for archaeological monuments is set up to emphasize the importance for understanding the history of all mankind. In addition, artefacts can easily be destroyed during excavations and research.

More than 360 archaeological sites are registered in the State Register of Immoveable Monuments of Ukraine<sup>4</sup>. Unfortunately, during archaeological excavation, only some primary scientific information was obtained and artefacts have been taken away. Such territories are still protected by the state, but these lands are often leased to farmers for growing crops. Such decisions are illogical since any kind of work that changes the original state of the land destroys the archaeological site and should be prohibited. Therefore, land use should be controlled and any damage minimized. As a result, archaeological sites are only partially used for science; the opportunity to thoroughly study it with more advanced methods in the future becomes impossible [Tytova, 2009, p. 83].

The list of monuments that are not subject to privatization is the second exception of the ownership rights regulation. Until 1991, all monuments belonged to the state. After the proclamation of independence, the citizens of Ukraine received the right to privatize (buy) state property. The new owners should have enough resources to renovate and take care of the monument. Unfortunately, the results of privatization have been fairly negative and many privatized monuments remain

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4 The information taken from the State Register of Immoveable Monuments of Ukraine.

in poor condition. Therefore, the Law on Temporal Prohibition of the Monuments Privatization was passed in 2005. Later, in 2008 the Ukrainian Parliament passed the law on the List of Monuments that are not Subject to Privatization. This law consists of a full and comprehensive list of monuments that cannot be privatized.



Fig. 1. Palace of the 18<sup>th</sup>–19<sup>th</sup> centuries, Pryozerne, Ivano-Frankivsk region, № 1193/1. Privatized in early 2000 and still owned by a private individual. Photo by: A. Hulkevych, 2010.

Nonetheless, this law does not contain rules on the land and territory surrounding the monument. The general principle of the land law states that when a person becomes the owner of a house or building, the ownership of the land lot also passes to this person (Article 120 of the Land Code of Ukraine). However, the application of this rule is not always possible. For example, some responsible authorities have no power to make the decision, or owners do not have the necessary documents.

Today, it is possible to privatize a monument which is not included in the above-mentioned list. The monument can be privatized only if the future owner signs a preliminary agreement with the relevant body for the protection of cultural heritage. This agreement must contain information about the purpose of use of the monument, and the work that the future owner undertakes to carry out on the monument in order to keep it in good condition (art. 18 of the LCHP).

The third exception deals with the monument's territories. Valuable land plots of historical and cultural purpose belonging to the local community or the state

cannot be transferred to the ownership of private persons. However, there is no information in the legislation which lands of historical and cultural purpose are valuable and cannot be transferred to private ownership. Exceptional value is a feature of the monuments of national importance, so likely the land under them is also valuable. However, this is not a solution to the problem, and there is a need to clarify the list of such land plots. Moreover, in accordance with the new Procedure for Determining the Categories of Monuments, approved by the Resolution of the Cabinet of Ministers of Ukraine of May 22, 2019, No 452, the feature of special value is no longer applicable to monuments of national or local significance.

As a result, there is a separate legal regulation for monuments and for lands of historical and cultural purposes. Legal restrictions of monument use does not include restrictions on territories use and vice versa. Legal rules are incoherent, and the application of the law is quite complicated.

#### **4. DUTIES OF THE MONUMENT OWNERS**

##### **a. Protection agreements**

Protection agreements should be signed with the owners or users of monuments not later than one month after becoming an owner or a user. The procedure for concluding protection agreements and a typical form was approved by the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2001 No. 1768. The protection agreement shall specify the procedure for using the monument, any works that should be done inside or outside, rules for tourists, etc.

The protection agreement is concluded with the local authority for the protection of cultural heritage (local executive authorities or local government). However, the central executive body, which ensures the formation and implementation of state policy in the field of cultural heritage protection, should approve a protection agreement for a monument of national significance (today it is Ministry of Culture and Information Policy of Ukraine).

Currently, protection agreements have been concluded for 49,103 monuments, which is only 35 percent of the total number (140,372 monuments). If the owner or user does not sign a contract, he may be fined. However, such fines have not been imposed often in recent years. Unfortunately, it is a consequence of the unsatisfactory work of officials of the Ministry of Culture responsible for this area of work<sup>5</sup>.

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5 The information from the report on the results of the audit of the effectiveness of the use of state budget funds allocated to the Ministry of Culture of Ukraine for the preservation of historical, cultural and architectural heritage in national and state reserves, implementation of cultural heritage protection measures, certification, inventory and restoration of architectural, cultural and world heritage sites.



The absence of a security agreement does not release a person from the legal obligations (art. 23 of the LCHP). However, it does undermine the importance of the protection agreement, since the obligations of the parties should be defined in detail, considering the specifics of a monument and its territory. Despite the existence of a standard form of such a contract, each obligation for the monument must be individual. Today, the signing of protection agreements should be a priority task of the responsible authorities.

#### **b. Permit Issues in the Sphere of Cultural Heritage Protection**

Archaeological surveys, excavations, other works on the territory of the monument, protected archaeological territory, in protection zones, in the historical areas of settlements, are prohibited without the permit issued by the responsible authority (art. of the 35 LCHR art. of the 10. LAHP).

The process of issuing permits is regulated by the Resolution of the Cabinet of Ministers of Ukraine No. 316 of March 13, 2002. Only state institutions and organizations that carry out activities related to archaeological research have the right to apply for a permit to conduct archaeological research or excavations. Both a state authority and any interested person can obtain a permit for carrying out other earthworks. The Ministry of Culture must decide to issue a permit within one month after receiving an application.

Permit for earthworks is issued for the period of their implementation, but not longer than one year. A permit to conduct archaeological research or excavations is valid during the current year, and it creates specific problems in practice. It seems illogical to ask for a permit at the end of a year, since at the beginning of the next year the procedure will have to be repeated. As archaeological research or excavations can last for years, there is always a need to renew permits every time a new year begins. Therefore, long breaks are possible during archaeological research and excavations.

At the same time, the owner or user of the land plot must not interfere with the works if a permit for archaeological research or excavations is issued (art. 35 of the LCHR). Nevertheless, it is unclear whether the owner or user can use the site should he ensure the safety of the territory in a particular condition in the period when the permit for the current year has expired and a new permit has not yet been issued.

If an archaeological or historical artefact is discovered during earthworks, the worker or owner is obliged to stop the works and notify cultural heritage protection authority within one day (art. 36 of the LCHR). An owner who wishes to conduct any works connected with the conservation, renovation, restoration, or

development of the territory of a monument has an obligation to submit the relevant project documentation. The works can be conducted only after the project documentation has been approved and after written permission has been issued by the relevant authority (art. 26 of the LCHR).

Another problematic question is related to urgent works. There is no answer to the question on what to do if the monument becomes damaged, and there is no time to receive the permit. Perhaps, it should be regulated by a protection agreement and the risks and consequences of the work should be estimated in each case.

### **c. Responsibility measures for the violation of the Law on Cultural Heritage Protection**

Cultural heritage protection is a question of significant public interest. If the owner does not care for the monument, the state should remind them about the obligations or limit the ownership rights. Therefore, the state can buy real estate for public needs or public interest. However, the general procedure does not apply to monuments, whose owners do not obey the law and do not care about cultural heritage preservation (art. 2 of the Law About Alienation of the Land Plots and Real Estate Which Belong to a Private Person, for Public Needs or Public Necessity).

If the owner of the monument does not take the measures to preserve it, due to the impossibility of creating the necessary conditions, the court at the request of the relevant authority for the protection of cultural heritage may decide to purchase it (art. 21 of the LCHR, art. 352 of the Civil Code of Ukraine). The purchased monument then becomes the property of the state. Hence, the state may purchase monuments and land plots of historical and cultural significance only with a court decision as a sanction for the violation of the law on protection of cultural heritage. It remains unclear whether the authority has the power to ask a court for purchasing a monument together with the surrounding land lot. Such a purchase of monuments should be conducted together with the land on which the immovable object of cultural heritage is located. First, the natural and historical environment of the monument will be preserved. Second, a situation can arise when the monument and land lot belong to different persons. This can lead to specific difficulties in the law's application or the monument's protection in the future [Donets, 2010 p. 97].

## **5. CONCLUSIONS**

The implementation of state and legislative policy in the field of cultural heritage protection is carried out unsystematically in Ukraine. This leads to problems in the law's application and does not contribute to a monument's protection.

The primary law in this sphere – the Ukrainian Law on Cultural Heritage Protection provides legal rules only for immovable and tangible cultural heritage. The territories of the monuments should also belong to the lands of historical and cultural purposes. Both monuments and lands of historical and cultural purpose may belong to the state, local community or a private person. The law contains several exceptions from this rule. Some exceptions are related only to monuments and some to lands of historical and cultural purpose. In other words, these two objects can belong to two different owners. Such situations further complicate the law's application.

According to the general rule the state may purchase real estate for public needs or public interest. However, if the owner does not take care of the monument, the responsible authority should bring a suit to a court demanding to buy a monument and transfer it to state property.

Thus, cultural heritage is quite strongly protected by law, yet in practice, legislative restrictions are not often implemented. The reason for this is both the unclear system of administration in the sphere of cultural heritage protection and legal documents full of prohibitions and restrictions considering different activities instead of proper regulation.

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Fig. 1. Palace of the 18<sup>th</sup>–19<sup>th</sup> centuries, Pryozerne, Ivano-Frankivsk region, № 1193/1. Privatized in early 2000 and still owned by a private individual. Photo by: A. Hulkevych, 2010.

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## **Protection of roadside alleys and historic roadside alleys – selected problems related to the discrepancies in the competences of nature protection and monument protection authorities**

### **SUMMARY**

Historic avenues and trees integrated into the complexes of historic stands play one of the fundamental roles in the shaping of urban and roadside greenery, thus fulfilling many important environmental and cultural functions. They undeniably contribute to improving climatic conditions and the quality of the environment. They favor the favorable exchange of air masses, braking and reducing noise nuisance. The implementation of the protection of historic garden assumptions, historic stands or individual historic trees is therefore extremely difficult due to its multi-faceted nature. It brings together issues and “objects” in the field of monument protection, nature protection and environmental protection.

**KEY WORDS:** tree protection, protection of historical varieties, administrative recognition, protected values, subjective rights

### **1. INTRODUCTION**

Roadside alleys, regardless of whether they are entered in the register of monuments and thus formally covered by the protection provided for by the provisions of the Act of 23 July 2003 on the protection and care of monuments [Journal of Laws, 2020, item 282 as amended], always have, apart from the natural value, the cultural and landscape value. However the current tendency is to understand roadside alleys in the doctrine and jurisprudence – as economically designated roadside greenery – defined by the definition of the Act on Public Roads.

Only the recognition of roadside alleys as a monument strengthens the protection of cultural and aesthetic values, which they possess by their very essence. Widespread, and not fully consistent with the assumptions of the foundations of their legally sanctioned protection, their value is primarily determined by their economic function. As indicated by court experts in the field of dendrology – the cultural values of roadside alleys occupy the next place in the social awareness

after their economic, technical and natural values [Mitkowska, 1997]. In Slavic culture, however, it is impossible to separate the natural values of certain elements of nature from their changing cultural values over time. Sometimes only a conglomerate of these values is able to oppose economic valuation and reliably define the essence of the subject of protection. Roadside alleys together with species typical of tree stands have become an element of the regional landscape of Poland, and due to the typical nature of traditional planting species, distinguishing Poland from other regions of Europe [Hodor, Łakomy, 2015].

Not without significance for the interpretation of the law regarding the use, protection and conservation of roadside and historic roadside alleys is the fact that art, folklore and rituals often use the confluence of natural and cultural values, and this is what has allowed individual species to survive human interference in nature. In Polish law, the term avenue or historic avenue does not have a legal definition. The term alley is a concept in the field of garden art and landscape architecture, and it is their form, function and symbolism that determine its specific cultural value [Mitkowska, 1997; Drachal, 2020]. The avenue is a collection of trees that occur and interact with each other in a given area. This mutual interaction determines its existence both on the natural and cultural level. And such a statement is a description of the subject of protection at the actual level, indicating that it is always a specific ecosystem. Trees in the avenues are interdependent with their surroundings, contributing to soil quality, air quality, the number of organisms inhabiting them, and the condition of other biotic and abiotic components of the environment.

In assessing the condition and condition of avenue trees, it is important that both individual species and individual trees interact with each other, hence the selection of appropriate planning and technical prevention should take into account appropriate legal and actual measures [Drachal, 2020]. The use of inappropriate ones constitutes improper performance of property rights or tasks, which will be discussed later in this chapter.

## **2. WAYSIDE AVENUE AS A SUBJECT OF PROTECTION**

### **a. The roadside alley as a subject of protection on the actual level**

In legal language, the terms “historic avenue” or “avenue” can only be found in the case of a name given to a road category on the basis of acts of local law. Only the definition in the field of landscape architecture defines it on the factual level as follows:

- Alley – a walking, bicycle or motor road, as well as a water communication route, planted on both sides with trees or shrubs with a specific composition, that is maintaining the rhythm of plantings and landscape connections. Its characteris-

tic feature are its special natural, cultural, aesthetic and economic values. There are single-species or multi-species alleys, one-century or centuries-old, and one-, two- or multi-row avenues [Dworniczak, Ziemiańska, 2012]. The aforementioned structure and form determine the essence of the subject of protection, in this case basing it on natural and cultural (including aesthetic) foundations. It is important that the avenue has always a beginning and an end, which can also determine its essence and the selection of the means and methods of protection, as well as the way of its cultural interpretation, which is also important for its legal protection.

- Contre-alley – in avenues composed of more than two rows of trees, it is a side (outer) alley [Rozmarynowska, 2017].

#### **b. The legal status of historic avenues**

Historic avenues are subject to multi-level legal protection, taking into account four basic branches of law, including undisputedly taking into account the constitutional foundations of environmental protection and the emerging subjective rights in the field of nature protection. Specifying their status at the statutory level, it should be stated that they are:

- a common good, a component of the environment, an element of culture and heritage, which conform to the broad foundations of constitutional protection under the Constitution of the Republic of Poland of April 2, 1997;
- green areas within the meaning of the Act of 16 April 2004 on nature protection [Journal of Laws, 2020, item 55 as amended]; The landscape and trees are listed in the Nature Conservation Act as a resource that requires protection, consisting in "preservation and sustainable use." One of the aims of nature protection is "protection of landscape values (...) and trees.";
- natural environment resources, as defined in the Act of 27 April 2001 – Environmental Protection Law [Journal of Laws, 2020, item 1219];
- roadside greenery within the meaning of the Act of 21 March 1985 on public roads [Journal of Laws, 2020, item 470 as amended];
- a monument within the meaning of the Act of 23 July 2003 on the protection and care of monuments [Journal of Laws, 2020, item 282 with amendments]; individual trees can be monuments, they can also be museum objects – a rare approach;
- a monument with individual natural monuments;
- in the case of old roadside alleys, they can be comprehensively recognized as a natural monument within the meaning of the Act of 16 April 2004 on nature protection [Journal of Laws, 2020, item 55 as amended];
- roadside greenery or green areas with individual natural monuments;



- items that are part of the owner's property – within the meaning of the Act of 23 April 1964, the Code of Civil Law [Journal of Laws, 2019, item 1145 as amended];
- property, within the meaning of the Act of 6 June 1997, the Code of Criminal Law [Journal of Laws, 2019, item 1950 as amended];
- public goods within the meaning of substantive administrative law.

They are subject to international and EU protection on the basis of:

- Florentine Charter, document – supplement to the Venice Charter – dated 15 December 1981 [ICOMOS, No. 81, item 13];
- The Hague Convention of 14 May 1954, protection of cultural property in the event of an armed conflict, along with the regulations implementing this convention and the protocol on the protection of cultural property in the event of an armed conflict [Journal of Laws, 1957, No. 46, item 212];
- Convention of 17 October 2003, on the protection of intangible cultural heritage drawn up in Paris [Journal of Laws, 2011, No. 172, item 1018];
- Problem-specific EU directives.

### c. Powers and duties of the property owner and manager

In order to define the obligations and rights in the use, protection and maintenance of historic roadside alleys and alleys not covered by conservation protection, it is important to indicate the owner of the trees forming the alleys, which does not always have to be clearly correlated with the status of the road owner and depends on the manner and implementation of the road lane designation. Who is the owner of the roadside alley – depending on the distance of the road surface itself, it is the road administrator (up to 3 meters), (over 3 meters) it may be a different owner. The Public Roads Act defines the functions of roadside greenery, defining it as “vegetation located in a road lane, aimed in particular at protecting road users from being dazzled by vehicles coming from the opposite direction, protecting the road against wind and snow, and protecting the adjacent area against excessive noise, air, water and soil pollution.”

The role of the tree system formulated in this way reduces them, first of all, to an economic and technical role, and secondly to a natural role, ignoring the cultural aspect assigned to it. It is the cultural aspect that also determines the correctness of the selected planting material [Siewniak, Mitkowska, 1998]. Secondly, this choice determines the effect of sustainable development and the preservation of biodiversity not only of the trees themselves, but also of the ecosystem in a given area. Thus, it protects constitutionally protected values [Tuleja, 2019]. It

is necessary to point out here the constant necessity to revise the understanding of the constitutional concepts of biodiversity and sustainable development by administrative bodies. Article 2 of the Act on Public Roads provides that public roads, due to their functions in the road network, fall into four categories: 1) national roads (designated by the minister responsible for transport in agreement with other ministers), 2) voivodeship roads (designated by the regional council), 3) district roads (designated by the district council), 4) commune roads (designated by the municipal council); streets along these roads are of the same category as roads. The road lane is, in accordance with Article 4 point 1 of this act, the land separated by border lines, with the space above and below its surface, on which there is a road and construction facilities and technical devices related to the guidance, security and service of traffic, as well as devices related to the needs of road management. The road administrator is responsible for maintaining roadside greenery, including planting and removing trees and shrubs (Article 20 (16) of the Public Roads Act) and their proper care (which is sometimes a controversial statement in the doctrine). It should be noted that the Act on Public Roads prohibits the performance of activities in a road lane that may damage or damage the road, in particular the removal of roadside trees (Article 39).

On the other hand, the Regulation of the Minister of Transport and Maritime Economy of 2 March 1999 on the technical conditions to be met by public roads and their location [Journal of Laws, 2016, item 124], applies to the design and construction of roads and related construction equipment as well as their reconstruction, extension, reconstruction and renovation, which are subject to the obligation to obtain a building permit. Paragraph 53 of the regulation states that the distance between trees and the edge of the road should not be less than 3 meters, while allowing for the maintenance of existing trees (also if they grow closer) [Habuda, Radecki, 2015]. Maintaining roadside greenery, including planting and removing trees and shrubs, is the responsibility of the road managers (national, provincial, country and municipal).

The condition for the removal of trees or shrubs from the road lane of a public road is a permit issued at the request of: – the commune head, mayor or president of the city, – if the road runs through real estate entered in the register of monuments – voivodeship conservator of monuments, – if it is a communal road outside the real estate entered in the register monuments – starosts. The overriding reason for the removal of trees and shrubs is traffic safety and roadway renovation. Both of the reasons indicated in the law, without a thorough dendrological analysis, constitute a field for abuse and irreversible genetic depletion of natural values and the disappearance of characteristic cultural values. A special mechanism intro-

duced in Article 83a paragraph 2 of the Nature Conservation Act, referring only to trees growing in the road lane of a public road, stipulates that a permit to remove a tree in a public road lane, with the exception of foreign poplar species, is issued after consultation with the regional environmental protection director.

A permission to remove a tree or shrub in areas covered by landscape protection within the boundaries of the national park or nature reserve can be obtained after consultation with the director of the national park or the regional director of environmental protection, respectively. The authority competent to issue the permit referred to in paragraph 2a and 3, shall immediately submit for agreement the draft permit along with the files of the case, including photographic documentation of the tree or shrub.

If there is a need to conduct explanatory proceedings, the regional director of environmental protection or the director of the national park shall notify about its initiation. However, in the case of a historic avenue, the voivodship conservator of monuments is the first authority competent to consider the application, i.e. its legitimacy and assessment of the subject of protection. In the case of avenues not formally protected by the conservator, the competent authority to which the request for a removal permit has been submitted assesses whether such a permit should be issued, prepares a draft approval decision, which is sent to the Regional Directorate for Environmental Protection for its position.

After receiving the draft the Regional Directorate for Environmental Protection, acting pursuant to Article 106 of the Act 14 June 1960 – Code of Administrative Procedure [Journal of Laws, 2020, item 256 as amended], issues a decision, the content of which may be: 1) agreeing the design without comments – then the authority competent to issue the permit issues it in the form of a decision, the draft of which was sent to the Regional Directorate for Environmental Protection for approval, 2) agreeing the design with comments (e.g. ordering the permit to plant substitute plantings, which the authority has not provided for, or, if the authority has provided for replacement plantings, changes the number or other details of replacement plantings) – then the authority competent to issue the permit issues a decision taking into account the remarks of the Regional Directorate for Environmental Protection 3) refusal to agree to the project – then the authority competent to issue the permit is obliged to refuse to grant a permission.

In a situation where the Regional Directorate for Environmental Protection does not issue any decision, the authority competent to issue the permit is obliged to wait 30 days (counting from the date of receipt of the project by Regional Directorate for Environmental Protection) and acknowledge that the Regional Directorate for Environmental Protection agreed to the project without any comments and thus

issued the permit. If the authority issued the permit without requesting the Regional Directorate for Environmental Protection to agree, such a decision would be burdened with a defect justifying the resumption of the proceedings pursuant to Article 145 § 1 point 6 of the Act of 14 June 1964 – Code of Civil Procedure [Journal of Laws, 2019, item 1460 as amended] ... the decision would have been issued without obtaining the legally required position of another authority [Radecki, 2015].

A permit for the removal of trees and shrubs by the Regional Directorate for Environmental Protection, or without taking into account the Regional Directorate for Environmental Protection's comments on the conditions of the permit, such a decision would be burdened with a defect justifying its annulment pursuant to Article 156 § 1 point 2 of the Code of Civil Procedure (decision issued with gross violation of the law). The view rooted in the doctrine states that if the authority intends to refuse a permit, it can do so without consulting the Regional Directorate for Environmental Protection, as a negative decision does not have any impact on the environment, and therefore such approval is unnecessary [Gruszecki, 2011, p. 48]. Thus, the well-described natural values and their impact on the cultural values of roadside alleys not covered by conservation protection may result in their more effective protection and conservation at the level of selecting appropriate actions by local government units, taking into account the state of evidence [see: Judgment of the Supreme Administrative Court of 1 December 2009 – II OSK 1860/08].

#### **d. Implementation of protective measures**

Admittedly, new lanes of land for the future construction of roads are always determined in the local plan and the voivodeship spatial development plan, which makes it possible to additionally control the degree, direction of changes and implementation of nature protection in a given area at the level of local legislation. The maintenance of the existing trees in the road strip will be influenced by: proper tree care and proper agrotechnical treatments in the green belt, as well as appropriately selected methods of maintenance and protection of the road surface. The repealed provision of Article 80 of the Nature Conservation Act obligated the minister responsible for transport to define, in consultation with the minister of the environment, the technical and natural conditions for the establishment and maintenance of trees within the road lane. Also the repealed provision of Article 82 of the Nature Conservation Act, which stipulates that earthworks and other works related to the use of mechanical equipment or technical devices carried out within the root mass of trees or shrubs in green areas or wooded areas should be carried out in a way that is the least harmful to trees or shrubs, and treatments within tree crowns in green areas or wooded areas may only include:

- removal of branches that are dead, broken or colliding with building structures or technical devices;
- shaping the crown of a tree whose age does not exceed 10 years;
- maintaining the formed shape of the tree crown.

Also pursuant to Article 82 of the Nature Conservation Act, chemical agents should be used on public roads, streets and squares in a way that is the least harmful to green areas and wooded areas, and the minister responsible for the environment will define, through a regulation, the types of measures that can be used in places referred to in section 2 as well as the conditions for their use, guided by the need to ensure road safety, landscape protection and biodiversity, as well as appropriate road maintenance and road safety.

The repeal of the above regulations leaves a decision gap at several levels of administration, whose control must be carried out individually for its effectiveness, taking into account expert knowledge in the field of natural sciences. On the basis of the above-mentioned and repealed regulations, the regulation issued by the Minister of the Environment of October 27, 2005 on the types and conditions of using agents that may be used on public roads, streets and squares is still in force [Journal of Laws, 2005, No. 230, item 1960]. The catalogue of permitted measures is closed and varies in the degree of toxicity and the price of the substance. The choice of these measures is left to the owner or manager, and thus s/he is obliged to submit the protection of natural and cultural values of the subject of protection over economic costs. The control of this obligation must also be individualized.

### **3. DUALISTIC NATURAL PROTECTION OF TREES**

Strengthening the protection of the ecosystem and the roadside alleys, both historic and not under conservation protection, is carried out by statutory species protection, which is derived from the Nature Conservation Act.

The species under protection are: 1) plant species listed in the regulation of the Minister of the Environment of 5 January 2012 on the protection of plant species [Journal of Laws, 2012, item 81], 2) animal species listed in the regulation of the Minister of the Environment of 12 October 2011 on the protection of species of animals [Journal of Laws, 2011, No. 237, item 1419], 3) species of fungi listed in the Regulation of the Minister of the Environment of 9 October 2014 on species of wild mushrooms under protection [Journal of Laws, 2014, item 1408]. Therefore, if the removal of a tree or shrub or interference with its structure led to the destruction of a protected species or destruction of its living condi-

tions, then such permission for the interference may not be issued, unless a prior permit was obtained: – the General Directorate for Environmental Protection granted pursuant to Art. 56 sec. 1 of the Nature Conservation Act in relation to strictly protected species, – the Regional Directorate for Environmental Protection granted pursuant to Article 56 section 2 of the Nature Conservation Act in relation to species under partial protection. If the authority which received the application for a permit to remove a tree or shrub decides that the removal or interference results in the destruction of the protected species or its living conditions, it should inform the applicant about the need to obtain a permit from the General or Regional Directorate for Environmental Protection. The authority should suspend the procedure for a permit to remove a tree or shrub and wait for the decision of the General or Regional Directorate for Environmental Protection, applying for it itself or obliging the applicant to do so. If the decision is negative, the authority issues a decision refusing permission to remove a tree or shrub or to intervene. Only when a positive decision is obtained – i.e. if the General or Regional Directorate for Environmental Protection allows the destruction of a protected species or its living conditions – the authority competent to issue a permit for the removal of a tree or shrub may issue such a permit. It may also refuse to issue such a permit on an administrative discretion basis. The legal nature of the permit is different from that of the concession [Radecki, 2015, Gruszeński, 2010]. It is important that the owner of the roadside alley and the authority competent to issue permits in the scope of their protection are subject to the obligation and entitlement to which they can and should be accounted for because the subject of protection is a common good. Pursuant to Article 88 section 1 of the Nature Conservation Act, determination by the competent authorities for the implementation of protection requires the still developing, together with specialist knowledge, reliability in examining the case, e.g. whether the actual destruction of trees or greenery was caused by improper performance of earthworks or the use of mechanical equipment or technical devices and the use of chemicals in a way that is harmful to vegetation.

Examination, assessment and proving by the authority requires not only that the damage occurred on the site of potential works, but that they are caused by these works and not other factors, and also that the execution of these works or the use of equipment or technical equipment, whether the use of chemicals was inappropriate. The administration body is obliged to take all necessary steps to clarify the facts and the subject of protection [Judgment of the Supreme Administrative Court of 6 July 2010, II OSK 1138/09]. Despite discretion and free assessment of evidence, the authority is required to indicate which evidence is

based on the decision or decisions taken, and which evidence and why it refused credibility, failure to do so results in an unacceptable burden of proof in the case of [Judgment of the Provincial Administrative Court in Łódź from on 22 April 2009, II SA / Łd 648/08].

The implementation of the protection of historic roadside alleys is based on the coherence of norms and principles from the systems of environmental protection law and the law of protection of cultural heritage. The vectors to maintain this protection are the control activities of the inspection bodies and the participation of social organizations and owners of neighboring real estates in cases of suspicion of occurrence or occurrence of damage in protected values. Economic reasons cannot determine the choice of methods of conservation and protection of historic avenues, which has an established jurisprudence in relation to the monument. In the case of roadside alleys, this should be considered as improper performance of the obligation and abuse of rights [see: Judgment of the Provincial Administrative Court in Warsaw of 28 March 2018, VII SA/Wa 1576/17].

Therefore, the issues of evidence presented to the authority by social organizations or persons having a legal interest in doing so are important. The issue of legal interest in environmental protection is now a key point and an evolving issue in the effective implementation of protective measures. The concept of the reflex law also applies here. At each stage of the implementation of the protection of historic roadside and roadside alleys, the authorities of local government units and social organizations have clear powers provided by law. Their effectiveness comes down to the availability and possibility of using substantive knowledge in the field of ecology and biodiversity protection. The position of the citizen is lower, characteristic of administrative law. It must demonstrate its unquestionable legal interest, individual in the protection of the common good.

The problem is complicated by a situation where damaging agents or treatments in the tree structure are legally allowed by law, although they are inappropriate and harmful to scientific knowledge. Then it can be assumed that the authority or the owner acting on the basis of law does not operate within its limits.

“The brace that binds the burden of proof in public and private law is the need to protect public interest. To protect public interest in the form of environmental protection, the legislator uses both the possibilities provided by administrative law and those provided for by civil law. It is up to the legislator which of these instruments will be used, when and to what extent.

In each case, however, the burden of proof is determined by the need to protect the public interest [Rakoczy, 2010]. One of the important issues here is the “axiological deficit”, the doctrinal dilemma between the “state of law” and the “just state”.

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# **III**

## **Protection of intangible cultural heritage – case studies**



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## The principles of cultural heritage protection and public access to cultural heritage with reference to the principle of integrity of cultural objects

### SUMMARY

The aim of this paper is to discuss the relationship between principles of public access to cultural heritage with reference to the principle of integrity of cultural objects. In the process of implementing the cultural heritage protection law, there is a need to weigh and balance these two legal principles and the principle of cultural heritage protection. An actual impact of the court jurisprudence on the interpretation of legal regulations concerning cultural heritage protection law becomes significant, however the greatest influence can be seen in establishing of its principles.

The cultural heritage objects should be commonly available without imposing restrictions on the recipients of culture. On the other hand, the obligation to create conditions for the dissemination of cultural goods should be implemented by taking into account the principle of cultural heritage protection and the principle of integrity of cultural objects. The author argues that the creation of optimal legal and practical conditions for the dissemination of cultural goods is currently becoming a necessity.

**KEY WORDS:** cultural heritage law, cultural heritage, intellectual property law, right to integrity, historical monuments, cultural objects

### 1. INTRODUCTION

At present, cultural heritage protection law is recognized as a comprehensive branch of law [Zeidler, 2014 p. 28; Zeidler, 2018, p. 147; Węgrzak, 2017, p. 33; Fernandez Liesa, 2012, p. 52]. It contains both tangible and intangible heritage protection. The scope of protection of material and intangible heritage cannot be separated, and the survival of the elements of intangible heritage depends on their proper preservation of elements of material heritage. As a result, material elements would not arise without the context that intangible heritage provides them [Szreiber, 2009, p. 70]. This makes the law regarding the protection of cultural heritage very important.

One of the criteria for separating the branches of law is having its own principles of law. The research carried out in the indicated scope exposed the existence

of the principles of the protection of cultural heritage and became the basis for their suggested catalogue [Zeidler, 2018, p. 147; Węgrzak, 2019, p. 107]. The principles of cultural heritage law meet the contemporary approach to law seen not only as a set of provisions contained in legal acts but also as a set of principles or guidelines existing in the legal system. “Decoding” these principles, and then confirming them in the justification of courts’ rulings causes courts to legitimize the existence of these principles in the legal system and to affect the interpretation of legal regulations concerning a given subject [Atienza, 2007, p. 43; Tkacz, 2014, p. 87]. An actual impact of the court jurisprudence on the interpretation of legal regulations concerning cultural heritage protection and explanation of the meaning of law becomes significant, however the greatest influence can be seen in establishing of its principles.

In this paper the relationship between the principles of cultural heritage protection and the principle of public access to cultural heritage with reference to the principle of protection of property and integrity of cultural heritage objects will be discussed. Historical monuments are part of cultural heritage but they also are subject of intellectual property law. It is also important to note the clear distinction between the property of *opus mechanicum* of the work to which the right in rem is vested and the expression expressed in this work. In the process of implementing cultural heritage law, there is a need to weigh these legal principles in relation to the values they protect. There is a controversy what values should be given priority in a particular case and it is common that the courts’ decisions become discretionary [Węgrzak, 2018, pp. 13–120; Węgrzak, 2019, pp. 41–57].

## **2. THE PRINCIPLE OF CULTURAL HERITAGE PROTECTION AND ACCESS TO CULTURAL OBJECTS WITH REFERENCE TO THE PRINCIPLE OF PROTECTION OF PROPERTY AND INTEGRITY OF CULTURAL OBJECTS**

The principles of law are one of the most significant normative constructs and the feature that gives a legal norm the status of a principle of law is its importance for the legal system. The lack of principles makes it impossible to name a set of legal norms a system of law. Moreover legal principles become a guidance for the executives authorities to make a decent decision and also might be understood as legal norms which order the realization of a certain value [Kordela, 2014, p. 119; Morawski, 2003, p. 146; Atienza, 1990, p. 236].

It should be noted that there is no one universally accepted definition of the principles of law in jurisprudence. According to Sławomira Wronkowska the special

role of legal principles in the legal system is that: firstly, they set the course of legislator's actions. Secondly, they mark certain ways of shaping some legal institutions and guide the interpretation of the law. Thirdly, they demonstrate the directions of application of the law; finally, fourthly, they direct how to deal with the different rights that are available for its holders. It is also accepted in doctrine that principles of law are used in two main meanings – descriptive and directive. As directive statements, they might be interpreted from legal acts and they assign their addressees in certain circumstances a given pattern of behavior [Wronkowska, Zieliński, Ziemiński, 1974, p. 186].

Beyond any doubt the principle of cultural heritage protection is of a great importance – on the one hand it is the constitutional principle based on the preamble and Article 5 of the Constitution of the Republic of Poland, on the other hand it is the so-called meta-principle of cultural heritage protection law. It is stipulated that “The Republic of Poland shall (...) safeguard the national heritage and shall ensure the protection of the natural environment pursuant to the principles of sustainable development” [Constitution of the Republic of Poland, 1997, Journal of Law, 1997, No. 78, item 483 as amended]. In the light of this principle not only other principles of cultural heritage law but also legal regulations regarding a given subject should be interpreted. Another constitutional principle of cultural heritage – the principle of access to cultural objects – is expressed in Article 6 and Article 73 of the Constitution [Constitution of the Republic of Poland, 1997, Journal of Laws, 1997, No. 78, item 483 as amended]. The first of these provisions imposes an obligation on state authority to provide conditions for equal access to cultural goods that are the source of the Nation's identity, continuity and development. The constitutional order to preserve and promote cultural heritage can be designated to public authorities. The society, however, is also involved in these obligations since historical and artistic goods have a special value because of their role as a link between the past, present, and future.

On the other hand, the principle of access to culture is limited by the principle of cultural heritage protection as well as the principle of ownership of cultural heritage objects and intellectual property law. Authors' rights contain their moral rights, in particular, the right to integrity of works. The concept of integrity refers to the connection between the author and his/her creation and the protection of the personal and reputational, rather than monetary value of their work [Nizankowska, 2007, p. 56]. With regard to the principle of protection of integrity of cultural objects, the question appears: whether and to what extent the alteration or interference with the essence of a cultural heritage object, for example, to protect it from destruction, violates the authors' rights.

It is said that the principle of integrity of cultural heritage is similar to the principle of integrity of works in copyright [Zeidler, 2018, p. 149; Węgrzak, 2019, p. 166]. Some claim however that it differs significantly in purpose since it is not much for the protection of the author's rights as for the protection of cultural heritage object itself from interference in its shape and form. Thus it is directly connected with the recommendations developed on the basis of conservation theory. The preservation of the original is also in the public interest to maintain cultural heritage for the future generation and the concept of cultural heritage as a common good [Drela, 2006, p. 2; Jagielska-Burduk, 2011, p. 257]. Cultural heritage is a concept to which most people assign a positive value, and the preservation of material and intangible culture is generally regarded as a shared common good from which everyone benefits. These conditions constitute the basis for special regulations under the general expression of cultural heritage law, because of their objective to conserve, divulge, and spread culture.

In legal literature the right to the work's integrity is treated as the right "to demand respect for the form of a work given to it by the creator" or the right to "work immunity" or "inviolability character of the work" [Barczewski, 2020, p. 57; Barta, Markiewicz, 2008, p. 75; Golat, 1999, p. 109; Judgment of the SN of 25 April 1989, I CR 141/89]. Thus the right of integrity is known as a right of the author to prevent all modification: revision, alteration, or distortion of their work, regardless of who owns the work. Two distinct objectives in the right of integrity may be found: the preservation of cultural heritage and the protection of the author's reputation and moral rights to their work. Moreover the issue of ownership of work, if it is recorded in a material form, might also be considered. The ownership rights over *corpus mechanicum* of the cultural heritage object might be transferred to another person while the copyright still remains with the author. The scope of the creator's moral rights differs with the cultural concepts of authorship and ownership, but may include the creator's right to prevent their work from being altered without their permission or to control who owns the work. The principle of property protection and the right of ownership has to be balanced with the protection of integrity of cultural object and the principle of protection of cultural heritage. Nevertheless, the principle of property protection is very important in the light of ownership divisions of monuments. It is the owner's duty above all to provide the most effective protection of cultural objects that he/she owns and to maintain them in a good condition [Dobosz, 2011, p. 71]. According to Article 5 of the Polish Act on protection of monuments and guardianship of monuments of 2003 "The guardianships of monuments by its owner, or its proprietor consists, in particular, in ensuring conditions for (...) : 3) protection, and maintenance of

a monument and its surroundings in the best possible state; 4) use of a monument in a way ensuring permanent preservation of its value (...)” [Act of July 23, 2003 monuments protection and care].

With reference to moral rights, Article 16 the Polish Act on copyright and related rights protects the connection between the author and his/her work which is unlimited in time and independent of any waiver or transfer, and, in particular, the right, to have the contents and the form of the author’s work inviolable and properly used. Based on Article 16 “Unless this Act stipulates otherwise, the moral rights shall protect the link between the author and his/her work which is unlimited in time and independent of any waiver or transfer, and, in particular, the right: 1) to be an author of the work; 2) to sign the work with the author’s name or pseudonym, or to make it available to the public anonymously; 3) to have the contents and form of the author’s work inviolable and properly used; 4) to decide on making the work available to the public for the first time; 5) to control the manner of using the work” [Act of 4 February, 1994 on copyright and related rights, Journal of Law, 2019, item 1231 as amended].

On a side note, it can be said that the Berne Convention grants protection of copyrights, including the right to the integrity of the work, in Article 6 bis. Content of the right to the integrity of the work is regulated in paragraph 1 of this article and states: ”1) Independently of the author’s economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation”. Therefore, it can be assumed that any interference in the work – in its form or content, and sometimes also „spirit” – regardless of its „quality” or „seriousness” violates the right to integrity of this work. The author does not have to prove or even justify the violation or possibility of violation of any of your creative interests. The consequence of this approach is the completely discretionary nature of this right [Berne Convention for the Protection of Literary and Artistic Works of 1886, Journal of Laws, 1935, No. 84, item 515].

### **3. LIMITATION TO THE PRINCIPLE OF INTEGRITY OF AUTHORS’ WORKS**

Apart from individual copyright, the public interest should also be taken into account. It should be noted, however, that there is limitation to access for a society to cultural heritage. For this reason the right of integrity of authors’ work is not absolute as its limitation might be found in article 49 of the Polish Act on copyright and



related rights. It stipulates “1. If the contract does not specify the manner of the use of a piece of work, that manner shall comply with the character and purpose of the work and accepted practice. 2. Regardless of having purchased all the author’s economic rights, a legal successor may not, without the consent of the author, alter the work in any way unless it is obviously necessary and the author has no justified reason to object to it. This applies respectively to works where the period of protection of the author’s economic rights has terminated.” [Act of February 4 1994 on copyright and related rights, Journal of Laws, 2019, item 1231 as amended]. This article defines the protection of property copyrights and specifies the manner of using a piece of work that should be consistent with the character and purpose of the work and accepted practice.

In addition, no changes may be made to the work without the author’s consent, unless it is obviously necessary and the author has no legitimate reason to object. However the conflict between exercising the right to the integrity of the work by the author and the rights of the holder of economic rights might appear. As opposed to copyrights that ensure that the author will benefit economically from the use of his/her work, the author’s moral right is vested in the personal connection between an author and his/her work. The author has an inalienable right to prevent others from for example modifying, distorting or otherwise interfering with the integrity of that work.

It has to be pointed out that the possibility of some modifications of the work without the consent of the creator exists if they are caused by obvious necessity and the creator would not have a legitimate reason to oppose them. However, one may ask what really should be understood under these terms. The difficulty in interpretation may appear due to the fact that the legislator used general clauses such as “grounds for opposition” or “obvious necessity”. Their meanings can always be related to a specific situation, applicable customs, specifics and the type of a given industry. These are not clearly defined criteria and the court’s decision in a particular case is discretionary.

One can ask: does the creator have the right to oppose for example the changes to the monument or the sculpture which are done because of conservation works or to prevent destruction? Which principles of cultural heritage law should prevail?

Through moral rights, the author can impose limitations or requirements on what others, including cultural institutions and state and local authorities, can do with their work. Even though cultural institutions or city councils may have physical ownership of a protected work, this procures insufficient legal grounds for several uses of the work. This can range from the way in which an artwork is presented; to separating an artwork from its intended whole; to painting a sculpture

a different color to removing a sculpture from the spot for which it was commissioned and where the artist meant it to remain or to remove part of the monument. Cultural institutions and state and local authorities not only are obligated to protect the cultural heritage but also promote artists' authority over their own needs; nevertheless, the ongoing care must be taken in relation to the use of a work in order not to breach an author's moral rights.

While amendments to original work took place without obtaining the prior author's consent it has to be considered whether the violation of authors' right took place i.e. in a situation in which this modification was a must or was objectively relevant to the work. If the answer to this question is affirmative or there is a high probability of its occurrence, then one should justify the interference in the form of the work on the ground of „obvious necessity” and „lack of a just ground of objection” (the conditions should be used together). The justification of the changes may also be circumstances of a technological, economic or public interest. Such attitude may lead to the conclusion that an objective assessment of the needs for changes should take into account the interests of both parties and public interest and not only the protection of the author's rights.

#### 4. THE PRINCIPLE OF INTEGRITY IN COURTS' DECISIONS

The double nature of rights and the freedom of authors' right and the distinction of the *corpus mysticum* (the idea) and *corpus mechanicum* (the physical expression of the idea) appear in courts' decisions. The collision between intellectual property rights with other rights and limits might be found [Capote Perez, 2019, pp. 73–102]. This controversy might be illustrated by some court cases in which the authors claim that amendments e.g. to the historical monuments violate the moral dimension of intellectual property rights in its aspects of integrity of work and exclusivity of modification rights by the author. Moreover, a partial destruction of the sculpture, without the author's consent, seems to infringe her/his intellectual property rights. The justification of dismantling the monument may be based on the sculpture's bad condition when its structure has cracks which may pose a risk to its stability. The security in public places and conservation of the monument should be pointed out, concluding in the declination of intellectual property rights.

Thus, there is a need to balance the principle of integrity of a cultural object with the principle of cultural heritage protection, followed by the principle of public access to the culture. In one case, the Spanish Court recognized the importance of integrity rights and declared that security reasons were admissible to justify the dismantling of the sculpture, but not extensible as an argument. There was, at

last, a damage of author's moral rights. The courts verdicts "reflects an example of one classic legal dilemma: the limits between rights. In his claims, author invoked the moral dimension of intellectual property rights. That part never leaves the author's patrimony, despite of the physical representation being transmitted to others" [Judgment of Santa Cruz de Tenerife Commercial Court, No. 14/2013].

Moral intellectual property rights maintain their validity as inherent faculties to *corpus mysticum* of all works, independently of the ownership of *corpus mechanicum*. These rights can never justify the realization of activities which could violate moral rights. Therefore, the classic idea about *ius abutendi* as a faculty of property rights is doubly discarded and denied in intellectual works. However, moral rights are not absolute, especially when colliding with other rights like public protection in public places or imperative rules like avoiding security risk in public places [Capote – Perez, 2019, pp. 71–102].

In some Polish court cases the possibility of amendments to the architectural project was discussed [Judgment of the Court of Appeal in Kraków of June 18 2003, I A Ca 510/03; also: Judgment of the Court of Appeal in Warsaw of December 1 2017, IV SA/Wa 2033/17]. The city council decided to place the monument in the middle of the square but the architects were not asked for permission to modify the space, nor were they consulted. According to them, the integrity of their architectural project was violated. They argued that the project was a thoughtful and completed work, referring to the history of the square and adhering to the concept of an open place. The Court of Appeal in Kraków found that the architects were right when it came to the impossibility of situating the monument on the square because it changed its function. Regardless of whether the monument location in the square prevents the installation of various types of temporary elements of the arrangement of the square, this fact cannot be invoked when assessing the violation of the right to the integrity of an architectural work. The court hold that only aesthetic and not functional elements in the project structure are subject to copyright protection. It is a controversial decision as any change in the work, including that which goes beyond purely aesthetic elements, actually changes the whole work, affecting the aesthetics. Although it is also possible that changing non-creative elements of a work does not affect the content and form of the creative part of it.

## 5. CONCLUSIONS

Cultural heritage objects, as an element of cultural heritage, should be commonly available, without imposing restrictions for the recipients of culture. Be-

sides this, the obligation to create conditions for the dissemination of cultural goods should be implemented by taking into account the principle of property protection and the intellectual property rights with a special reference to the right of integrity of author's work. Moral rights as the author's right to control his or her own creation, in particular the right for authors of attribution and of integrity fall both within the scope of one's property rights as well as of one's right to freedom of expression. The courts considering the principle of integrity often take into account the nature of the work, its location, presentation technique, and characteristics while aesthetic values are not taken into consideration. Some restrictions on personal copyright may also arise from the nature of contractual provisions relating to specific works or from the need to respect public policy rules.

Due to this the optimal legal and practical conditions for the access to cultural goods should be created. The principle of proportionality is, therefore, extremely important while the conflict of legal principles appears. It allows for a solution of this collision by giving the priority of one principle above another. In the case of a conflict of principles, the court applies the principle more relevant in a given situation, which does not mean that the second one is not in force or that in another case the order of preferences may be different. If possible, the court should apply the principles taking into account the principle of proportionality.

Moreover, it is beyond doubt that the catalogue of the principles concerning cultural heritage protection law should be formulated. *De lege ferenda*, it has to be considered which of the above principles should be explicitly formulated in written legislative acts. Fulfilling this postulate will lead to strengthening the legal system of cultural heritage protection. According to the constitutional principle of sustainable development, cultural heritage protection reflects the needs of the society to maintain the sources of its identity and the achievements of its ancestors. The balance between the general collective interest – governed by public law – and individual rights – governed by private law has to be found.

The main challenge is to develop a new approach to the protection of cultural heritage, which would take into account its holistic nature, also reflecting the observed trends in international law and international relations. Although the terminological duality of tangible and intangible heritage seems to justify their separate treatment, it is increasingly common to conclude that these are only aspects of the same subject of protection: cultural heritage as a whole.

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## CHAPTER XII

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### Address markings – witnesses to the history of Kraków's territorial divisions

#### SUMMARY

Walking along the streets of Kraków, both within the Old Town and in its newer parts, you can encounter various address markings decorating the façades of Kraków buildings. Apart from the obvious informational dimension, they are sometimes carriers of aesthetic values and a platform for the manifestation of local, district distinctiveness. The diversity of address markings in terms of their form and content – apart from a considerable margin of cases being the effect of randomness – reflects Kraków's territorial divisions and their evolution throughout the city's history.

**KEY WORDS:** Kraków, address markings, address plate, territorial division

#### 1. INTRODUCTION

Who of us, while walking along the streets of Kraków's Old Town, has not reflected on the reasons for the significant diversity of address plates decorating the façades of Kraków's tenement houses? Their apparent similarity is disturbed by the considerable scale of alternations occurring both in the aesthetic and content layers. Some of these differences are – of course – the result of carelessness or excessive creativity of the owners of individual properties. Most, however, stem from something completely different. They reflect the standards functioning in Kraków in the field of address markings at the time when they were used. This differentiation applies to both the form of the signs and their content. Particularly (though not only) the second of these groups of alternations is closely related to the historical spatial development of the city and the successive (and sometimes co-existing) intra-city territorial divisions occurring in the course of its history.

The issue of address markings discussed in this article, as witnesses to the history of Kraków's territorial divisions, could, therefore, take the form of two separate reflections. The first one would focus on the form of this marking, which – as surprising as it may sound today – was not always a plate, and its connection with the city's territorial divisions. The second, would tackle the textual layer of



the markings, more clearly referring to the historically adequate division of the city into organizational units. To ensure the clarity of thought, the analysis will be made through a chronological illustration of successive historical periods in terms of both the form and the content of the address markings. The connection of these two spheres and their mutual relations with the territorial divisions of the city justifies the adoption of such a technique.

## 2. THE PERIOD FROM THE MIDDLE AGES TO 1792

Medieval Kraków, like many other cities in Europe of that time, did not practice the today's obvious technique of building numbering, which was based on assigning them consecutive numbers along the street (or square) on which they are located [Tomkowicz, 1926, pp. 3–4]. It was dealt with differently. A common practice was to use the so-called identifying emblems, i.e. solutions combining elements of artistic techniques (sculpture or relief decorating the portal of the tenement house) and associative perception (using symbolism and calling buildings "*Kamienica pod...*" (*Tenement house under ...*)). To this day, many buildings, especially in the oldest part of Kraków, have the original identifying emblems. Examples include the "Pod Jaszczurką (Jaszczurami)" ("Under the Lizard") tenement house at 8 Rynek Główny (Main Square), the "Pod Elefanty" ("Under the Elephants") tenement house at 38 Grodzka Street and the "Pod Pawiem" ("Under the Peacock") tenement house at 30 Świętego Jana Street (St. John's Street) [Kasprzyk, 2018, p. 50].



Fig. 1. The emblem identifying the "Pod Pawiem" ("Under the Peacock") tenement house at 30 Świętego Jana Street (St. John's Street). Photo: W. Górny.

This historically oldest technique of identifying Kraków's buildings, replaced in the 18<sup>th</sup> century by classical numbering (initially within a part of the city, later in relation to streets), returned at the turn of the 20<sup>th</sup> century (its examples can also be found today) [Kasprzyk, 2018, p. 50]. The modern identifying emblems, however, have a completely different function than the original ones. After all, they do not constitute a competitive solution for the commonly used street numbering today. In relatively late identifying emblems, whose example can be found in Retoryka Street, the centre of gravity is not placed on the informational dimension, but definitely on aesthetics. A perfect illustration of this phenomenon is the emblem of the tenement house "Pod Śpiewającą Żabą" ("Under a Singing Frog") at 1 Retoryka Street.



Fig. 2. The emblem identifying the "Pod Śpiewającą Żabą" ("Under a Singing Frog") tenement house at 1 Retoryka Street. Photo: W. Górny.

### 3. THE PERIOD FROM 1792 TO 1816

The last years of the 18<sup>th</sup> century brought a real revolution to the system of address identification of Kraków buildings. The system of identifying emblems functioning until that time was then replaced by the numbering of houses within the formally, administratively separated parts of Kraków. Significant fluctuations in the uniform (general administrative) division of the city at that time into Circuses, Quarters, Departments, Circuses again, Departments again, the City of Kraków and Suburban Departments and Municipalities did not favour the standardization of these designations [Kasprzyk, 2018, p. 70]. Relative stabilization in this respect took place

only after 1816, when the then functioning Free City of Kraków (the Republic of Kraków) was divided into eleven Municipal Districts [Malec, Malec, 2003, p. 112].

#### 4. THE PERIOD FROM 1816 TO 1858

In addition to the stabilization significance, the year 1816 also brought a completely new quality to the address markings of Kraków buildings. In this year, for the first time in the history of Kraków, a unified pattern of the address plate appeared in the municipal legislation (then under the Free City of Kraków). It was, in fact, two round plates placed on opposite sides of the building portal, one of which indicated the number of the Municipal District, the other the house number [Kasprzyk, 2018, p. 51]. An example of perfectly preserved to this day address plates from that time are the round markings on the façade of the tenement house at 10 Wiślna Street.



Fig. 3. The address marking of the tenement house at 10 Wiślna Street. Photo: W. Górny.

In this context, it is necessary to emphasize the fact that from 1838 the content of the plates indicating the number of the Municipal District did not refer to the city's administrative division, but to its cadastral division [Luchter, 2010, pp. 145–162]. The system of building registration to collect real estate tax, existing from the early 19<sup>th</sup> century, based on the existing division into municipalities, remained faithful to it also after the reform of the administrative division of the city in 1838 (creation of five Circuses). As a result, for the vast majority of the over 100-year period of the coexistence of the cadastral division and the administrative division deprived

of a tax role, Kraków's address markings referred to the belonging of a specific location to the appropriate unit of the former [Kasprzyk, 2018, pp. 32–47].

## 5. THE PERIOD FROM 1858 TO 1881

In connection with the above, another change in the legal conditions relating to the address designations of Kraków's buildings was the result of the reform of the territorial cadastral division of the city. In 1858, eleven cadastral Municipal Districts were replaced by eight Cadastral districts. The intention of the municipal legislator to include in the content of the address plate markings referring to the period both before and after this reform explains why the address markings from that period are considered the least readable in the history of the city [Kasprzyk, 2018, p. 52]. Single address plates, generally made of tin, contain an indication of the house number both within the Municipal District functioning until 1858 and to the Cadastral district existing after that date. An example of such an extremely difficult to understand plaque is the address marking on the façade of the tenement house at 25 Rynek Główny (Main Square) which has survived to this day.



Fig. 4. The address marking of the tenement house at 25 Rynek Główny (Main Square). Photo: W. Górny.

In addition to the specific “overloaded” information, content, address markings from that period became famous in the history of the city for their very characteristic feature. Namely, their form, and more specifically colours, reflected the then territorial cadastral division of the city. Hence, address plates in individual Cadastral districts had specific colours corresponding to individual parts of the city: District I Miasto właściwe (Proper City – Kraków) – white, District II Zamek (Castle) – pink, District III Nowy Świat – blue, District IV Piasek – yellow, District V Kleparz –

red, District VI Wesoła – green, District VII Stradom – purple and District VIII Kazimierz – orange [National Archives in Kraków, ref. Kr 7534, pages unnumbered].

## 6. THE PERIOD FROM 1881 TO THE INTERWAR PERIOD

The year 1881 brought a significant change in the field of address designations of Kraków's buildings. In this year, the numbering based on territorial division units (initially general administrative, then cadastral) of the city was replaced with the street numbering used to this day. The adopted solution assumed that buildings are numbered alternately within streets (or squares; even numbers were designated on the left, and odd numbers on the right), starting from the location closest to the Main Square (in the less central parts of the city from the location closer to their central street) [Kasprzyk, 2018, p. 52].

In addition to changing the numbering method, the reform of address markings in 1881 also introduced a significant modification in the form of address plates. Their shape, size and material from which they should be made were then precisely determined. Their colours have also been determined in advance. It was assumed that plaques throughout the city (without distinguishing between its individual parts) should contain black letters and numbers on a white background with a blue border. The content of the address plates, apart from the building number and the street name marking, was then to include the indication of the corresponding part of the city (1 of 8, and then 31 (1910/1912–1915) and 22 (1915–1928)) Cadastral districts [Kasprzyk, 2018, p. 52].

An example of a plate that implements the above guidelines is the address marking of a tenement house located at 9 Matejki Square (until 1882 at 9 Główny Square).



Fig. 5. The address marking of the tenement house at 9 Matejki Square (9 Główny Square).

Photo: W. Górny.

## 7. THE PERIOD FROM THE INTERWAR PERIOD TO THE PRESENT DAY

Revealed after several years of use, the low durability of address plates made according to the guidelines of 1881 [National Archives in Kraków, ref. 29-665-201] contributed to the process of gradual – progressing in the interwar period – departing from this pattern. Starting in the 1920s, the inhabitants of Kraków began to increasingly replace the still officially valid pattern of plates from 1881 with new ones – referring to the aesthetics that dominate today – blue enamel plates with a white border and with white letters and numbers. Starting from the interwar period, more and more often, address plates on buildings began to be accompanied by the so-called “address lanterns” – elements protruding from the façade of cast iron and glass or steel and glass, illuminated by a light bulb mounted inside them [Kasprzyk, 2018, p. 60]. Lanterns, quite common also today, were to provide better visibility of the building address in the evening and at night.



Fig. 6. The address lantern on the façade of the tenement house at 8 Wiślna Street.  
Photo: W. Górny.

Spreading gradually throughout Kraków, initially in a grassroots and customary form, and since the post-war years as the official pattern recommended by the city authorities, the blue enamel address plates, depending on the period of their placement, contain a different – with a different designation of a part of the city – content. Almost until the end of the period of coexistence of internal territorial divisions of Kraków – cadastral and administrative, the designation of a part of the city referred, as already mentioned, to the former (i.e., depending on the period, to the proper Cadastral district whose number increased to 52 in 1941–1951 or – from 1951 – to one of the 64 Cadastral communes).



Fig. 7. The address marking (probably prior to 1954) of the building at 4 Kraszewskiego Street. Photo: W. Górny.

Introduced in 1954, the new administrative division of Kraków into six Districts resulted in a definite separation of the content of the address markings from the cadastral division (which was abolished a year later and replaced with the municipal land and building register). The pattern of address plates recommended at that time assumed that the lower part of the name of one of the six unnumbered at the time administrative Districts was: Stare Miasto (Old Town), Zwierzyniec, Kleparz, Grzegórzki, Podgórze or Nowa Huta.

The content of the address plates was also reflected in the reduction in the number of Kraków Districts from six to four in 1973. Thus, in the years 1973–1991 the lower part of the address plate contained an indication of Śródmieście, Krowodrza, Podgórze or Nowa Huta, respectively.

Similar consequences were caused by the division of Kraków into 18 districts – auxiliary units of local government, introduced almost 30 years ago. Since the introduction of this division, i.e. since 1991, lower part of address plates of Kraków buildings include the designation of the local District. Initially (in the years 1991–2006), it was only the number of the District in Roman numerals. Since 2006, it has also been accompanied by the indication of its proper name, i.e. the following wording, depending on the location: District I Stare Miasto (Old Town), District II Grzegórzki, District III Prądnik Czerwony, District IV Prądnik Biały, District V Krowodrza, District VI Bronowice, District VII Zwierzyniec, District VIII Dębniki, District IX Łagiewniki-Borek Fałęcki, District X Swoszowice, District XI Podgórze Duchackie, District XII Bieżanów-Prokocim, District XIII Podgórze, District XIV Czyżyny, District XV Mistrzejowice, District XVI Bieńczyce, District XVII Wzgórze Krzesławickie, District XVIII Nowa Huta [Purchla, 2016, pp. 109–116].

## 8. SUMMARY

The above-described evolution of the address markings of Kraków's buildings clearly shows that these objects are of great interest not only to the researchers of Kraków's history but also the administrators interested in the history of this city's management. Based on this finding, two groups of recommendations relating to the issue of Kraków's address markings can be postulated. The first one, calls for the care of the preserved evidence of the city's past territorial divisions. The owners of Kraków buildings are often unaware of the historical value of the plaques on the façades of their tenement houses. This should change. The second of the postulates relates to the present and the future. It seems indisputable that the city authorities should ensure that the address markings currently placed on Kraków buildings comply with the standards adopted in this regard, and above all, that they properly describe the District in which the property is located. This is particularly important in the view of the fact that, as the research of this issue shows [Swianiewicz, Krukowska, Lackowska, Kurniewicz, 2013, pp. 13–22], despite nearly 30 years of operation of Kraków local government Districts, many city residents still do not know in which district they live. Address markers seem to be an excellent tool to overcome this challenge.



Fig. 8. Plan of Kraków's District I Stare Miasto (Old Town)

with marked locations of objects illustrated in the text. Internet source:

<https://www.poczetakrakovski.pl/malejczyzny/iii-aktualne-dzielnice-samorzadowe-krakowa/>.



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## FIGURES:

- Fig. 1. The emblem identifying the "Pod Pawiem" ("Under the Peacock") tenement house at 30 Świętego Jana Street (St. John's Street). Photo: W. Górny, 2020.
- Fig. 2. The emblem identifying the "Pod Śpiewającą Żabą" ("Under a Singing Frog") tenement house at 1 Retoryka Street. Photo: W. Górny, 2020.
- Fig. 3. The address marking of the tenement house at 10 Wiślna Street. Photo: W. Górny, 2020.
- Fig. 4. The address marking of the tenement house at 25 Rynek Główny (Main Square). Photo: W. Górny, 2020.
- Fig. 5. The address marking of the tenement house at 9 Matejki Square (9 Główny Square). Photo: W. Górny, 2020.
- Fig. 6. The address lantern on the facade of the tenement house at 8 Wiślna Street. Photo: W. Górny, 2020.
- Fig. 7. The address marking (probably from before 1954) of the building at 4 Kraszewskiego Street. Photo: W. Górny, 2020.

Fig. 8. Plan of Kraków's District I Stare Miasto (Old Town) with marked locations of objects illustrated in the text. Internet source: <https://www.poczetkrakowski.pl/maleojczyzny/iii-aktualne-dzielnice-samorzadowe-krakowa/> (access: 07.09.2020).

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## A university's cultural heritage based on the administrative law approach as exemplified by the Jagiellonian University in Kraków

### SUMMARY

A university's cultural heritage is an unusual topic because of the unique and a universal nature of universities' operations. The universities' heritage comprise both tangible and non-tangible cultural heritage, the combination of which creates a specific unity and fulfills an important social role of preservation, transmission and creation of cultural heritage not only of a given state, but also of universal heritage. An issue of safeguarding the cultural heritage (tangible and non-tangible) is of interdisciplinary nature, but in this scope acts of international law are of high significance, followed by national and local acts of law which are characteristic for a given state and bodies of local government.

The purpose of the chapter is to verify a hypothesis which assumes that a university possesses many designates of tangible and non-tangible cultural heritage, transmits the heritage of earlier generations to future generations and forms cultural heritage. This hypothesis will be verified through an indication of cultural heritage designates, an analysis of cultural heritage of universities *in genere*, as well a *case study* of the Jagiellonian University in Kraków.

**KEY WORDS:** administrative law, cultural heritage, university, Jagiellonian University in Kraków

### 1. INTRODUCTION

Heritage is an idea functioning in various academic disciplines and also defined in various ways. Taking into account numerous transformations of heritage throughout history, as well as broadening the range of definitions with more designates, it is worth quoting J. Pruszyński who considered things inherited after ancestors as heritage [Pruszyński, 2001, pp. 43–44]. Heritage has immense influence over many key elements of life, both of a state and a society, constituting cultural heritage, system of values, tradition, culture, customs – which function in a specific cultural circle. Due to its significance, heritage is subject to legal safeguarding on international, European Union, national and local levels, which takes places

through various branches of law, such as, for example, constitutional, administrative or penal law [Zeidler, 2014, p. 33].

University in its administrative and legal form displays characteristics of a public law corporation [Ochendowski, 2003, p. 455 ff], and it is also an administrative body [Zimmermann, 2016, pp. 199–203]. Traditionally, the main tasks of a university include development of science, education and formation of future generations. One can see, then, that heritage as well its transmission and development lie also at the base of the functioning of universities, thereby being one of its key elements. Contemporarily, many universities with centuries' long history display many designates which can be included into their cultural heritage and often decide on their prestige. Also, a university is a place where in addition to knowledge, non-tangible values are conveyed to students. These values constitute the output of previous generations, contributing to the formation of intergenerational bonds and relations, and can be perceived as implementation of a principle of intergenerational justice [Dobosz, 2015, pp. 16–17]. Thus, a university graduate should not only possess specialist knowledge in a given discipline, but also display social and cultural integrity in a system of values and cultural identity. One should also point out that a university's cultural heritage also includes tangible elements consisting of properties and movable objects.

The purpose of this chapter is to verify a research hypothesis which assumes that a university possesses many designates of tangible and non-tangible cultural heritage, transmits the heritage of earlier generations to future generations and forms cultural heritage. This hypothesis will be verified by listing designates of cultural heritage, providing an analysis of cultural heritage of universities *in genere*, as well as a *case study* of the Jagiellonian University in Kraków.

The research methods employed include: theoretical-legal, historical-legal, formal-dogmatic analyses, as well as a *case study* method.

## 2. LEGAL AND DOCTRINAL NOTION OF CULTURAL HERITAGE

Heritage is a vast notion, which refers to such legal ideas as, for example, a historical item or a cultural asset [Górny, 2019]. J. Pruszyński distinctly indicates that heritage: “is a resource of movable and immovable items together with related spiritual values, history and tradition, and it is recognized as worthy of legal safeguarding for the benefit of a society and its development, as well as is worthy of transmission to future generations on account of understandable and accepted historic, patriotic, religious, scientific and artistic values, which are of significance for the identity and continuity of political, social and cultural development, being

a proof of truths and commemoration of historic events, cultivation of a sense of beauty and civilizational community” [Pruszyński, 2001, p. 50]. Additionally, J. Pruszyński notes that “historic buildings and cultural heritage are not synonymous” [Pruszyński, 2001, p. 44]. While analyzing the definition of cultural heritage and its conceptual range it is worth bringing up the interpretation of J. Purchla who stated that: “Relation between the past and the future is not limited today to an issue of historic buildings and their safeguarding. A notion which recently has been making a spectacular career is cultural heritage (...). More and more often it replaces a classical notion of a historic building. It is necessary to emphasize here that while a historic building belongs to the past, the heritage serves contemporary purposes, where heritage includes not only tangible cultural assets, but also our memory and identity. Cultural heritage is a process with its own dynamics. It reflects both a relation of a society to the world of values, but also the very process of reinterpretation of values. This is where the growing significance of cultural heritage lies. Because heritage belongs to all of us, and access to it is one of fundamental human rights. Therefore, heritage always has a human dimension. From this fact we can also derive the key significance of cultural capital – not only for the dynamic process of incessant creation and reinterpretation of heritage, but for its effective safeguarding as well” [Purchla, 2013, s. 44].

Traditionally (also in international law) one distinguishes tangible and non-tangible cultural heritage. However, such dichotomic division must be subject to criticism as it is impossible to completely separate tangible and non-tangible heritage. In this context one must emphasize that a broad notion of heritage includes both tangible and non-tangible heritage, which is evidenced in subject literature [Pruszyński, 2001, p. 47; Gieysztor, 1995, p. 36], as well as the definition by K. Zeidler who suggests that cultural heritage includes both spiritual and material output of mankind [Zeidler, 2014, p. 13]. One can state then that in regards to heritage only a combination of its tangible and non-tangible elements yield the complete and therefore multi-aspect and diverse dimension of this phenomenon.

Cultural heritage also possesses its own definition which was contained in article 1 of the UNESCO Convention regarding the safeguarding of cultural and natural heritage of 16 November 1972 [Journal of Laws, 1976, No. 32, item 190; Mazur, 2018], pursuant to which the cultural heritage should encompass: “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.”

Analyzing the above regulation, one may notice that it refers to tangible cultural heritage. To include the significant non-tangible heritage, on 17 October 2003 the UNESCO General Conference adopted the UNESCO Convention for the Safeguarding of Non-Tangible Cultural Heritage, which became effective on 20 April 2006 [Journal of Laws, 2011, No. 172, item 1018], which – in article 2 section 1 sentence 1 – provided the following definition of non-tangible cultural heritage: “The ‘intangible cultural heritage’ means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage”. Below, in article 2 section 2 the designates of a notion of “non-tangible cultural heritage” were explained, however this list is of open nature and indicates the exemplary catalogue of designates of a notion of “non-tangible cultural heritage”, which has been expressed by a phrase: “manifested inter alia in the following domains” [Kozień, 2018, p. 75].

One must emphasize, though, that despite the adoption of the UNESCO Convention for the Safeguarding of the Non-Tangible Cultural Heritage, executed in Paris on 17 October 2003 [Journal of Laws, 2011, No. 172, item 1018], which has also some gaps [Kozień, 2018, pp. 75–76; 79–80], and in the dichotomic division into tangible and non-tangible cultural heritage one can observe on legal grounds what may affect the lack of its understanding and treating it in a holistic manner. Moreover, contemporarily an issue of cultural heritage is subject to dynamic changes [Dobosz, 2019, p. 32] and – as justly stated by P. Dobosz “over the course of several decades one may perceive a distinct segmentation of tangible and non-tangible heritage, as well as universalization of mechanisms of their safeguarding” [Dobosz, 2019, p. 32].

A notion of cultural heritage is also strongly connected with religious systems. In fact, it is religion – present on a given territory and in a given society – which to a significant extent determines cultural heritage. In Europe cultural heritage has a religious dimension [Tsioulas, 2014] and is inextricably linked to Christianity, and especially Roman Catholicism. Also in this spirit universities were established, likewise the heritage of universities is strongly connected with Christianity, and therefore with Christian values. In this context, the spreading of secularism, which as such has no neutral character, may be problematic [Weiler, 2020] and may lead to a partial or – with time – complete rejection of the heritage of universities.

The issue of defining cultural heritage in the contemporary world is widely discussed in both Polish and foreign literature [Blake, 2000; Vecco, 2010; Ahmad, 2006; Ndoro, 2008; Van Zanten, 2005]. Moreover, apart from the legal acts discussed in this article, the issue of the protection of designates of the concept of cultural heritage is regulated by numerous acts of international law [e.g. Journal of Laws, 1957, No. 46, item 212; Journal of Laws, 2012, item 210; Journal of Laws, 1996, No. 120, item 564; Journal of Laws, 2006, No. 14, item 98] and the national one, among which it is especially worth mentioning the Act of 23 July 2003 on the protection and care of monuments [Journal of Laws, 2020, item 282 as amended].

From the perspective of cultural heritage, especially its contemporary management, including the theory of management is of key importance [Magliacani, 2015]. In this scope it may be helpful to treat cultural heritage management as *sui generis* project management. Cultural heritage management should have an attribute of effectiveness, and also be assessed from a perspective of effectiveness of management of a given project [Kozień, 2019; Kozień, 2017, pp. 181–195].

### 3. CULTURAL HERITAGE OF UNIVERSITIES

Universities were established in Christian culture, and more specifically – in Roman-Catholic culture in the 11<sup>th</sup> and 12<sup>th</sup> centuries [Zientara, 2006, p. 329] or in the 13<sup>th</sup> century [Michałowski, 2012, p. 270]. At that time universities developed in Paris and Bologne, and served as a model for other universities which were established later [Zientara, 2006, p. 329]. In subject literature one more model of universities in the early phase of their existence is distinguished. It is the so-called Naples model [Waltoś, 2009, p. 15]. Since their very creation, universities have not only been the places of preservation and transmission of cultural heritage from previous generations, but also created their own cultural heritage, very strongly rooted in Christian heritage and values. For centuries various historical events have introduced changes at universities, their reforms, and sometimes even their heritage was denied. Nevertheless, universities and their idea and heritage have survived until today. The key importance is the preservation of this heritage, its transmission to future generations and development of this heritage, and not allowing for its denial. Contemporarily, the denial of the heritage of universities is dangerous, especially the denial of the strong bonds of the heritage of universities with Christianity, and especially with the Catholic Church, along with the formation of contemporary models of higher education which treat universities as enterprises, and university students as consumers [Molesworth, Scullion, Nixon, 2011]. Relation of a client – service provider is not adequate to a master – student



relation which has been functioning at universities for ages, and it violates a layer of the intangible heritage of universities. Also, it is worth to emphasising that knowledge and science are not merchandise [Kozień, Kozień, 2017]. Naturally, this does not change the fact that it is necessary to intensify co-operation among universities and their social and economic context [Baaken, Davey, Galan Muros, Meerman, 2011], which, when suitably formed, may also positively impact the preservation and development of cultural heritage of universities.

Cultural heritage of universities may be defined according to the traditional division, established in subject literature, into tangible and non-tangible heritage.

#### **a. Tangible heritage of universities**

As it had been quoted above article 1 of the UNESCO Convention for Safeguarding of the World Cultural and Natural Heritage of 16 November 1972 [Journal of Laws, 1976, No. 32, item 190] defined a catalogue of designations of a notion of cultural heritage which is of tangible nature. Therefore, the cultural heritage of a university may include university buildings, often of historic nature, which may be recognized as valuable works of architecture, or objects which are located on their territory, and are of historic character. It often happens that at centuries-old universities there are paintings and monumental sculptures. Their historic buildings and objects may also have historic inscriptions. Thus, presented designates may be grouped and together they may create historic objects. On the territory of universities there are also archeological elements and structures. One must emphasize that at universities, especially those with a long history (which sometimes dates back to the very beginning of the universities' existence) historic objects are very often "of commonly recognized exceptional value from the point of view of history, art or science" [Journal of Laws, 1976, No. 32, item 190], therefore they are the designates of a notion of cultural heritage and are located on the territory of universities.

On the territory of universities there may be groups of buildings and together with the landscape they may constitute, "an exceptional commonly recognized value from the point of view of history, art or science" [Journal of Laws, 1976, No. 32, item 190]. A characteristic feature of the universities is that that they usually have campuses established, and it also true for campuses of universities in city centers and beyond them. These campuses may also create, along with the surrounding landscape, an inseparable unit.

Historic places may also be found on universities' grounds. They may be man-made or natural, or both. In the grounds of some universities archeological standpoints or zones may also be found. If they have the "commonly exceptional value

from the point of view of history, aesthetics, ethnology or anthropology" [Journal of Laws, 1976, No. 32, item 190], they are also considered cultural heritage, safeguarded under international legislation, and especially the UNESCO Convention Regarding World Cultural and Natural Heritage of 16 November 1972 [Journal of Laws, 1976, No. 32, item 190].

#### **b. Non-tangible heritage of universities**

Non-tangible heritage is safeguarded by the UNESCO Convention for Safeguarding the Non-tangible Cultural Heritage, executed in Paris on 17 October 2003 [Journal of Laws, 2011, No. 172, item 1018], however, even prior to its adoption there were international legal acts which went beyond the safeguarding of tangible cultural heritage, such as: UNESCO Recommendation Regarding the Safeguarding of the Traditional Culture and Folklore, passed on 15 November 1989 during the 25<sup>th</sup> session of the UNESCO General Assembly, the Program "The Proclamation of Masterpieces of the Oral and Intangible Heritage of Humanity", which was passed based on a resolution of the 29<sup>th</sup> session of the UN General Assembly in 1997 to which, in 1998 the Executive Council developed detailed assumptions of its implementation, Resolution No. 30C/25 of the UNESCO General Assembly of 1999, Resolution No. 31C/30, adopted at the following session of the General Assembly, Declaration Regarding the Cultural Diversity adopted in 2001 at the UNESCO General Assembly, the Istanbul Declaration adopted during the Conference of Ministers of Culture in 2002 regarding "Non-tangible cultural heritage as a reflection of cultural diversity" [Późniak-Niedzielska, 2015, pp. 152–156]. In the editing of the UNESCO Convention Regarding the Safeguarding of the Non-tangible Cultural Heritage [Journal of Laws, 2011, No. 172, item 1018] some essential designates of non-tangible heritage were omitted, as it had already been pointed out above, but also a catalogue of non-tangible cultural heritage designates was open [Kozień, 2018, pp. 75–76; 79–80] by article 2 of the UNESCO Convention of 2003 which in the context of the subject of this article allows to point out a vast range of non-tangible cultural heritage, also of universities. Among the designates of the non-tangible cultural heritage pointed out as an example in article 2 section 2 of the UNESCO Convention of 2003 in the context of non-tangible heritage of universities the following fields should be indicated: "a) oral traditions and lore, including language as a carrier of non-tangible cultural heritage; (...) c) customs (...); d) knowledge and practices concerning nature and the universe" [Journal of Laws, 2011, No. 172, item 1018].

In the context of the definition of non-tangible cultural heritage derived from the designates of this notion included in the UNESCO Convention of 2003, those

which are present at universities may include *sui generis* prevalent university ethos, and expressing itself, inter alia, in a willingness of acquiring and broadening knowledge, exclusivity of studying, but also humility in conducting scientific activity and openness to discussion and new scientific findings. This ethos is also frequently expressed in strong attachment to the history of a given university and traditions that are present at a given university for years, even centuries. Moreover, in the activity of a university and its community one can detect a large scope of autonomy. Universities, especially those with long traditions, are a place of academic customs and practices, which beyond the national laws as well as internal laws of the university, have high impact and effect on the normal functioning of any university and relations among the academic community, including situations of conflict or crisis. Universities are also characterized by a special scientific and teaching "atmosphere". Internal relations are based to a large extent on the master–student relation, which also has non-tangible cultural heritage character. Being a member of a given university community (both as an employee or a student) is also connected, especially at universities with rich traditions and impressive scientific achievements, with prestige, of non-tangible dimension, as well as the awareness of contributing to the creation of elite. Universities are also places for development of culture and art, which may be expressed, for example, in the participation of university community members in cultural events, as well as in holding such events (for example, academic choir, academic theatre, cultural institutions in the grounds of university campuses). One may state, then, that at universities there is space for culture, which to a certain extent is of universal character for all universities, but also it is characteristic, and for this reason also unique to a given university, which a society, an academic community and individual persons recognize as a "part of their own cultural heritage" [Journal of Laws, 2011, No. 172, item 1018].

In the analysis of non-tangible heritage of universities a special characteristic can be attributed to the issue of intellectual property, and especially copyright, because – as M. Późniak-Niedzielska notices: "a piece of work is a non-tangible asset, whose existence is fully independent from a tangible item (...) on which it was recorded", and also that "a piece of work must constitute a manifestation of a creative output" and that "it must also have individual character" [Późniak-Niedzielska, 2007, p. 16]. Therefore it needs to be emphasized that scientific and teaching activities are inseparably linked to creation of works, which also constitutes non-tangible university heritage. Admittedly, the act of law of international significance, which aims at protection of copyright, is the Treaty of World Organization of Intellectual Property and Copyright, executed in Geneva on 20 December 1996 [Journal of Laws, 2005, No. 3, item 12].

Non-tangible heritage of universities is often inseparably linked to tangible heritage. Thus, it is difficult to fully learn as well as comprehend tangible heritage without the knowledge and understanding of non-tangible heritage. Only the combination of tangible and non-tangible heritage allows for a full view, research, understanding and transmission of cultural heritage to future generations.

#### 4. CULTURAL HERITAGE OF THE JAGIELLONIAN UNIVERSITY IN KRAKÓW

Cultural heritage of the Jagiellonian University may be seen through both tangible and non-tangible heritage. The Jagiellonian University has a long history and tradition. It was founded in 1364, as the second university in Central and Eastern Europe, after the University of Prague, upon the initiative of the King Casimir the Great as the Cracovian *studium generale*. The Cracovian University was based on the Italian model (in the foundation charter King Casimir cited examples of universities in Bologna and Padova), although it is believed that in reality the monarch followed the Naples model [Wyrozumski, 1999, pp. 361–363]. The revival of the Cracovian Academy was initiated by the King of Poland Saint Jadwiga of Anjou, and a new privilege, referring to the primary one, was issued on 26 July 1400 by King Ladislaus Jagiello [Rosik, Wiszewski, 2007, pp. 697–698]. Many centuries of history and tradition of the Jagiellonian University contribute to its rich and diverse cultural heritage and constitute an important element of Polish cultural identity.

The tangible heritage of the Jagiellonian University includes numerous buildings in the city of Kraków, among which many are located in the city's Old Town, which in itself is located on the UNESCO World Heritage List. They are to be found in the vicinity of the Main Market Square and the following streets: Saint Anna Street, Jagiellońska Street, Gołębia Street, Grodzka Street, Bracka Street, Olszewskiego Street. In this quarter the most outstanding historic buildings include: Collegium Maius, Collegium Novum, Collegium Iuridicum, Collegium Minus, Collegium Witkowskiego, Collegium Wróblewskiego, Larisch Palace, Collegium Broscianum, Collegium Kołłątaja, Collegium Nowodworskiego, Collegium Opolskie, Royal Arsenal. Beyond the Old Town the historic buildings of the Jagiellonian University include, for example: Collegium Sanockie, Silesian Collegium, old building of the Jagiellonian University, Medical Campus while among the streets are: Kopernika Street, Montelupich Street and Grzegórzecka Street, Collegium Śniadeckiego, Theatrum Anatomicum, Pusłowski Palace, Przegorzały Castle. The historic character of the above buildings is manifested not only by

their external façades, but also the interiors. Moreover, the buildings of the Jagiellonian University show numerous designates of movable tangible cultural heritage, and a special collection of historic designates is located in the Jagiellonian University Museum – Collegium Maius, Museum of Pharmacy, the Botanic Garden Museum, the Center of Natural Sciences Education, The Medical Faculty Museum, The Museum of Anatomy at Collegium Medicum, Anatomopathological Museum at the Medical Faculty [source of information: <https://www.uj.edu.pl/>].

Non-tangible cultural heritage of the Jagiellonian University is of complex nature and it is connected to the university's ethos, exclusivity of studies, openness to discussion and new scientific findings, history of the university, university traditions (including student traditions), university autonomy, guaranteed also by article 70 section 5 of the Constitution of the Republic of Poland [Journal of Laws, 1997, No. 78, item 483 as amended], academic customs and practices, academic and teaching "atmosphere", master and student relations, prestige of studying at the university, organization of numerous scientific and cultural events. Non-tangible cultural heritage also includes the numerous works (especially scientific works), which are created owing to the intellectual work of numerous academics, as well as teaching based on their own teaching methods and style. The prestige of the Jagiellonian University is also of the result of the outstanding personalities who were – at some point – connected to the university. Among them were: St. John Paul II, Nicolaus Copernicus, Paweł Włodkowic, Stanisław of Skalbmierz, Wojciech of Brudzew, Maciej Miechowita, Jan Kochanowski, Mikołaj Rej, Marcin Kromer, St. John Cantius, King John III Sobieski, Hugo Kołłątaj, Jan Śniadecki, Karol Olszewski, Zygmunt Wróblewski, Marian Smoluchowski, Napoleon Cybulski, Odo Bujwid, Jan Baudouin de Courtenay, Józef Szujski, Michał Bobrzyński, Stanisław Smolka, Krzysztof Zanussi, Professor Fr. Józef Tischner [<https://www.uj.edu.pl/universytet-z-collegium-medicum/historia>].

## 5. CONCLUSIONS

Concluding in the view of the above arguments; the research hypothesis that was formulated at the beginning of this paper has been proven true. The hypothesis claimed that a university possesses many designates of tangible and non-tangible cultural heritage, transmits the heritage of earlier generations to future generations and forms cultural heritage. This hypothesis was verified by listing the designates of cultural heritage, as well as through the analysis of cultural heritage of universities *in genere*, as well as by presentation of a *case study* of the Jagiellonian University in Kraków. One should emphasize, though, that a university is a carrier

of tangible and non-tangible cultural heritage, and also fulfills the key role in transmission and creation of cultural heritage. The example of the Jagiellonian University indicates that a university is also a key element of state identity and generally human identity of universal nature. In the scope of university heritage in principle it is not possible to separate tangible heritage from non-tangible heritage, since only their combination creates a specific unity – of cultural heritage with universal features. It is worth emphasizing that this universalism of universities also in the sphere of cultural heritage has been present from the very beginning of the existence of universities and originated from Christian values and the foundations for the functioning of universities, and especially of the influence of the Catholic Church, which is prevailing.

Cultural heritage of universities has its own specific nature, arising from their operations and tasks of a university as a public institution as well as from the fact that in administrative law a university is treated as a corporation and an administrative unit. Heritage of universities is safeguarded under international law, as well as national law systems. However, the special value of university universal nature should be recognized, as well as the tangible and non-tangible cultural heritage of universities treated as unique unity, which contributes not only to cultural heritage of a nation or state, but also to the universal cultural heritage, arising from Christian heritage of Europe.

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## CHAPTER XIV

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### **Protection through prevention – theatre as an extra-legal means of strengthening cultural diversity**

#### **SUMMARY**

The purpose of the article is to present the project “Let’s meet up...”, conducted by Polanda Association with its background and outcomes as an example of the activities aimed at preserving the cultural heritage of Kraków. In the article, we present the definition of cultural heritage and its linkages to human rights and multiculturalism. We also remind the historical roots of social diversity in Kraków as well as the increasing number of hate crimes as an impulse to introduce actions against such behaviours. Next, we present our project which is a result of the presented diagnosis, its scope, activities performed, outcomes and evaluation. The article is summarized with a proposal for a possible further use of the developed tools and products.

**KEY WORDS:** cultural heritage, forum theatre, NGO, project, hate crimes, discrimination, dialogue, youth work

#### **1. INTRODUCTION**

This article aims to present the background, implementation and outcomes of the project “Let’s meet up...”, carried out by the members and volunteers of the Polanda Association and funded by the European Solidarity Corps of the European Union. The project involved using the forum theatre method as a main tool and scope of activities.

The project took place in Kraków within the implementation period from April 1, 2019 until March 31, 2020 [Polanda, 2020, <http://stowarzyszeniepolanda.org/2020/03/31/zakonczenie-projektu-poznajmy-sie-na-scenie/>]. The main objective of the project was the development of awareness and knowledge regarding multiculturalism, resulting from migration, diversity in the local, urban community.

With the project, we intended to facilitate, by cultural experience, reflection regarding the complexity of social diversity and the immigration issue, for the target audience. The project target audience constituted four groups of youth attending different high schools in the city. However, in this paper, we would like to present a wider perspective and possibilities for further implementation of the project's outcomes.

The local nature of the project and its background combining law, cultural and historical factors showed us a wider perspective of treating project activities as a form of protection of cultural heritage and preventing hate crimes. Unfortunately, the outbreak of COVID-19 in March 2020 [WHO, <http://www.euro.who.int/en/health-topics/health-emergencies/coronavirus-covid-19/news/news/2020/3/who-announces-covid-19-outbreak-a-pandemic>] prevented the completion of some project activities, while providing interesting alternatives for the future. It gave us additional motivation to share information as well as good practices regarding conducting projects for a local community.

The paper will be divided into three parts. Firstly, we will present the project background and verify if the demographic structure of Kraków, as a city that today can be considered multicultural and socially diverse and with the origins of this diversity reaching historically into the past, allows regarding this multiculturalism<sup>1</sup> as part of its cultural heritage. We will also show that this diversity heritage requires protection as it is nowadays under the siege of anti-migrant xenophobic social attitudes leading to an increase of aggression and discrimination. We believe that there is no better way to change the reality than through the change of people's perception and there is no better way to do so than through dialogue and stimulation of individual and group reflection by experience. Facing our fears, which we believe are the source of discrimination, can support the change of attitude and the best way to do it is to immerse in this feeling by cultural activities such as theatre. We will summarize the first part with our proposition of using forum theatre as a means to change social attitudes and in the long term possibly help protect the heritage of diversity.

Secondly, we will present the scope and implementation of the "Let's meet up..." project, including a short presentation of the conducted in-depth interviews and its methodology. Then we will focus on the rules of the forum theatre method and the story built upon interviews. We will also share the opinions of the participants that took part in our test presentation of the prepared workshop.

To sum up, the third part will focus on the evaluation of the project and the possible further implementation of the outcomes. In this part, we will also present

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<sup>1</sup> The term "multiculturalism" should be here read as cultural diversity rather than as an associated ideology.

the impact of the pandemic outbreak on the project and the remedial actions taken. We will also share some remarks about the use of technology for learning and cultural activities. These considerations will be a summary of the article.

## **2. PART ONE**

### **a. What is cultural heritage?**

Cultural heritage is often defined as a category encompassing different main categories of heritage including tangible and intangible heritage. The former can be divided into movable (paintings, sculptures), immovable (monuments) and underwater (shipwrecks) while the latter is, for example, oral traditions, performing arts or rituals [UNESCO, <http://www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/unesco-database-of-national-cultural-heritage-laws/frequently-asked-questions/definition-of-the-cultural-heritage/>]. However, there is much more behind this elaborated concept. Cultural heritage is not only about different forms of cultural expression but also about the meanings placed upon them and the representations which are created from them [Graham, Howard, 2008, p. 2 cited Calligaro, 2014, p. 62]. Such an approach to heritage justifies referring to it not only as a subject but also as a possible agent – causative factor. Vibrant and causative, when properly approached by social actors, heritage, can be an element supporting the change. While treated as a security and identity anchor, allowing reference to the close and familiar artefacts the creative role of heritage is underestimated. This creative role is promoting shared society by fostering contacts among different groups and creating social cohesion based on new, shared identities [Aroz, Torre, Silberman, 2010]. This short reflection on the meaning of cultural heritage brings us a little closer to understanding the link between it and multiculturalism or social diversity.

### **b. Multiculturalism, heritage, human rights, and urban space**

It is not an easy task to ponder the slightly blurred concept of cultural heritage. We would include it to the collection of ubiquitous phenomena, known by everybody but not necessarily easily and correctly understood. Therefore, we would like to only highlight some of the doctrine voices confirming our intuition that there is a link between cultural diversity, cultural heritage, and human rights and that these concepts can meet at the city level. It is not our intention to discuss whether cultural diversity should be treated as a part of heritage or rather it instantiates the multicultural character of it, despite the attractiveness of such intellectual considerations. Fortunately, this link is acknowledged at the highest international level, supporting

our predictions. As stated by the Office of the United Nations High Commission for Human Rights [2010, cited Logan, 2012, pp. 1–2] “ensuring access to cultural heritage is a precondition for fostering dialogue and understanding across cultures and civilizations and therefore, for creating an environment which enables the promotion and protection of human rights for all”. These linkages are also visible at the level of the European Union, as highlighted in O. Calligaro’s [Calligaro, 2014, p. 79] analysis of European cultural policy “the introduction of the concept of intercultural dialogue in EU cultural policy is a discursive and policy response to the increasing internal European diversity resulting from international migration. The management of diversity, through intercultural dialogue, is now connected to the concept of European citizenship. A double shift can then be observed: while European cultural heritage was celebrated as the bedrock of European identity, intercultural dialogue is conceived as the framework in which European citizenship can thrive.” However, it can also be found at city level considerations. As stated by M. Dymnicka and K. Kajdanek [Dymnicka, Kajdanek, 2018, p. 78] in their paper on the role of multicultural heritage in the awareness of urban actors, “multiculturalism (...) combines cultural and social issues. It creates the prospect of opening for *not your* heritage, it is a challenge for cities where there is still a dispute over the past and memory”. The authors [Dymnicka, Kajdanek, 2018, p. 78] present a slightly different, or to be precise less enthusiastic, approach to multicultural heritage as a diversity building factor. Providing that it can be a part of the superficial policy, simplifying and reducing diversity. On the other hand, they present an observation, which is shared by us, that while there is a large interest in differences and diversity at the same time there is a lack of multicultural dialogue competences. As there is much more to the topic, to avoid losing the goal, we would like to sum up this part with one last conclusion that would lead to focusing on the next part of the article, namely the historical factors of Kraków’s diversity. It is important to look into the past, to learn in the present, as it is important to describe the phenomena behind the current events. However, what is even more important for the implementation of the projects is to combine theory with real people and their experience, all to avoid the art for the art’s sake activities.

### c. Kraków – multiculturalism of the city

Writing about the city requires a geographical perspective. In contemporary geographical research on multiculturalism, the already mentioned perspective of cultural heritage emerges. As stated by A. Rykała, [Rykała, 2013, cited Barwiński, 2016, p. 144] both in Poland and in other countries there are numerous cases of interruption of the multicultural continuity in a particular region. Yet material traces of the past always remain. They are often an important element of the city’s

history or identity. Therefore, as A. Rykała suggests, when studying multiculturalism, one should also take into account what we have inherited, the *multi-cultural* heritage. Kraków's multiculturalism can be easily observed, it is also eagerly raised by scholars. M. Golka [Golka, 1997, pp. 176–7 cited Kantor, 2004, p. 39] defines multiculturalism as “the occurrence in the same space (...) of two or more social groups with different distinctive cultural features: appearance, language, behaviour, religion, origin, set of values, etc., which contribute to the mutual perception of difference with different effects”. What is, however, more interesting are the effects mentioned by R. Kantor [Kantor, 2004, p. 49]:

- competition and rivalry;
- aggression;
- segregation and discrimination; and finally
- cooperation and friendly ties.

The fact that only one of these categories is presenting positive effects of such occurrence is not very encouraging. However, it does not implicate how often each of them appears. The most popular approach seems to be careful cooperation focused on achieving common goals [Kantor, 2004, p. 49]. In this part, we would like to present the historical development of the cultural diversity in Kraków and the reasons behind it. First of all, the city was greatly situated at the crossroads of migration and commercial routes. It has a very long history, from the location in 1257 under the Magdeburg law since when Kraków started to develop in a way similar to other cities. The location resulted in an inflow of German settlers. This, in turn, brought on heavy Germanization of the city [Kantor, 2004, p. 42]. However, from the 16<sup>th</sup> century on, the city started to move towards Polish identity [Ptaśnik, 1903 cited Kantor, 2004, p. 42] after the newcomers from other regions of Europe, Italy, France, and Jews had started settling here. This process established a base for future multiculturalism and diversity of Kraków's residents.

Despite these diverse origins characteristic for many Polish cities the narrative of Kraków's absolute Polishness prevailed for many years [Kubicki, 2012 pp. 58, 60]. The situation began to change since Poland's accession of the European Union and the change of the economic bases of the city, which started to include creative industry, such as tourism. As stated by P. Kubicki [Kubicki, 2012, p. 60] there is no better way to promote the city and encourage tourists to visit it than to promote it as an exceptional, open and tolerant place. To do so the best way is to refer to the multicultural heritage of the city.

Yet tourists are not the only reason why Kraków is becoming more and more diverse in terms of its inhabitants, many of whom are now working for international corporations located here, while many are migrants who came to find here

a better life. Currently, more than 10% of the city inhabitants are foreigners [Kursa, 2019]. The city acknowledges this trend by introducing different programs and activities aimed at supporting migrants. Such is the “Open Krakow” program initiated in 2016 or “Observatory of Multiculturalism and Migration” initiated in 2019 [Otwarty Kraków, 2020, [http://otwarty.krakow.pl/program/238799,artykul,obserwatorium\\_wielokulturowosci\\_i\\_migracji.html](http://otwarty.krakow.pl/program/238799,artykul,obserwatorium_wielokulturowosci_i_migracji.html)]. With all the positive effects and activities undertaken there is also a negative side of these developments. With the increase of diversity, a raise of anti-migrant behaviours occur. The history of diversity is being supplanted by nationalist narratives.

#### **d. Raise of hatred**

The problem of anti-migrant behaviours can be easily observed in daily life. Media reports about foreigners being attacked, insulted or harassed are becoming more frequent. Unfortunately also the local residents and Polish citizens are repeating the clichés of an unwanted stranger. The number of hate crimes is on the rise as stated by the Polish Commissioner for Human Rights in his report with only 5% of such crimes being reported [PCHR, OSCE 2018]. While there is no legal definition of hate crime, it can be defined as “criminal acts motivated by bias or prejudice towards particular groups of people. Prejudice or bias can be broadly defined as pre-conceived negative opinions, intolerance or hatred directed at a particular group. The group must share a common characteristic that is immutable or fundamental, such as “race”, ethnicity, language, religion, nationality, sexual orientation, or other characteristics” [OSCE 2009, p. 15]. In the Polish Criminal Code [Journal of Laws, 2018, item 1600 as amended] crimes that meet the above definition are described in three articles:

- Art. 119 § 1 – discrimination;
- Art. 256 § 1 – incitement to hatred;
- Art. 257 – assault due to xenophobia, racism or religious intolerance.

The number of these crimes is as mentioned on a rise. Just to show an example, following the report of Open Dialog Foundation [Cuper, 2019] hatred is aimed also at young people. A 14-year-old was attacked in Warsaw and ended in a hospital because of a darker skin tone. It also includes those who contribute to local community life, such was the Italian who is a guide to Auschwitz-Birkenau and who has been living in Kraków for many years now and whose apartment door was devastated. The number and descriptions of these crimes can be very upsetting, as well as the fact that the reaction of the authorities is not always proper. Altogether these factors, as well as our previous activities in the association, have encouraged us to develop a project aimed at addressing this issue but allowing a deeper reflec-

tion than for example an information campaign. This is how the project “Let’s meet up...!” was initiated. In the next part of this paper, we will describe the scope and implementation of the project.

### 3. PART TWO

#### a. Scope of the project

In this part, we will present the scope of the project as well as carried out activities. Through the implementation of the project, we intended to facilitate group and individual reflection among high school students as well as increase their understanding of immigration and diversity issues, which would result in strengthening or creating the attitude of tolerance, respect and a sense of community. The main goal of the project was to develop awareness and increase knowledge about diversity resulting from migration among four groups of high school youth, through their active participation in the workshops implemented in the forum theatre formula.

Forum theatre, a part of the Theatre of Oppressed concept which was invented by Augusto Boal, is a “form of community-based education that uses theatre as a tool for social change” [Mandala Centre for Change, <http://www.mandalaforchange.com/site/applied-theatre/theatre-of-the-oppressed/>]. The forum theatre is a technique in which an unresolved scene of oppression is presented. It is then replayed with the audience invited to stop the action, replace the character they feel is oppressed, struggling, or lacking power, and improvise alternative solutions [Mandala Centre for Change, <http://www.mandalaforchange.com/site/applied-theatre/theatre-of-the-oppressed/>] What makes this technique so powerful is the fact that the spectators, becoming *Spect-actors*, are an active part of the unfinished drama. Even solving it during the workshop is not making the story presented over. As an active participant of the drama, its former spectator and now a *Spect-actor*, brings the story back to reality. And the only option to solve the problem and for a resolution to happen is to take action by oneself, in real life [Theatre of the Oppressed: Definition, History & Characteristics, 2017]. This is what makes this method so powerful, but also the fact that it works allowing the participants as well as actors to immerse in the experience of the oppressed. In our case, they are the migrants in a local society, suffering from hatred and discrimination.

To achieve the main goal of the project and carry out the planned results, we have planned three main activities:

- Collecting data on the experiences of immigrants living in Kraków by conducting interviews;
- Familiarizing project participants with the forum theatre method;



- Developing the forum theatre script and workshop based on acquired knowledge of the method and collected data.

In the next paragraphs we will describe each of the activities as well as our reflection on the performance and difficulties that we have been facing during the implementation of the project.

### **b. Implementation of the project**

The first task of the project was to prepare a methodology for the in-depth interviews that were conducted with a group of migrants involved in the project. To provide a variety of experiences, the project group members consulted each other to identify representatives of different nationalities. The serious advantage of the process was having Polish-speaking foreigners involved in preparing the interviews. The formula of the interview was an audio recording as a method enabling the most casual conversation. After receiving permission for recording, the host started. The recordings are an unpublished result of the project, due to the private nature of the matters raised in some of the interviews.

The tool facilitating the discussion was a two-part multimedia presentation that could have been displayed on a laptop, tablet or phone, depending on the tools available. It was developed in two languages – Polish and English. We have resigned from the paper version of the interview due to the limited interactivity of this form. The interview was divided into two parts: boards and associations. Eight boards, with phrases, relating to the most important experiences that we wanted to ask the interlocutors about, were presented to each of them. The task was to reflect on and describe such things as: the most memorable visit to a store, the most surprising Polish customs, the impact of living in Poland on everyday habits, or to think whether dealing with official matters is problematic.

The second part of the presentation contained several selected catchwords – associations, such as family, language, values, religion, job, daily life, climate or history. The respondents when confronted with these slogans would choose a few of them (usually three) that generated the greatest emotions in them. They then shared their thoughts and memories. Additional questions were used in this part, and they were displayed after the interviewee had selected the given slogan. For example, for history the suggested remedial-questions were:

- Do you know any common points in the history of your country of origin and Poland?
- Do you have any Polish ancestors?
- Were there any historical events (both from general and family history) that influenced your decision to migrate to Poland?

The slogans played as a warm-up role – as a result, in the second part the respondents would often open up to and share their stories. After these two exercises, the full scope of the project was presented and respondents could share additional remarks. The most important remarks and stories were collected from the interviews and presented to the project group. In general, the experience of living in Poland was very positive, but almost everyone knew some unpleasant stories or bad experiences of other migrant friends. In some cases what played an important role was the fact of having (or not) EU citizenship. In general, administrative issues also were causing issues for the respondents and they had to use the help of Polish-speaking friends. Conducting the interviews allowed us to move on to the next stage of the project – preparing the forum theatre script and workshop plan.

The process of creating the script was facilitated by a professional coach, an expert with many years of experience in using forum theatre methods in business trainings. The process of creating the script was an intense period, taking over a dozen days, of both personal and story development. Members of the project group and volunteers, inspired by the stories from the interviews, life experiences and brainstorming sessions developed the plot characters and place of action. One of the most important parts of the story is the temperament of the characters as well as mutual relations. They provided the future scope for intervention when *Spect-actors* interrupt the play and create their version of the events.

This work resulted in an over half-an-hour play named “Otmar”. The latter was the name of the main character. The story of Otmar is a story of a French national of Algerian origin who came to Poland to work in one of the big companies located here and has decided to cultivate his family traditions of wine growing in a small village next to Kraków – Winiarki. As a Muslim, he finds Poland more open to religious beliefs than secular France. In one of the clubs he meets Sylwia, the daughter of Ilona. They both live in a big house in Winiarki, with a big, uncultivated field. Their life is not easy, especially after the death of a male-household member who was suffering from alcoholism. Only their neighbour, Maciek, secretly in love with Sylwia and the son of the head of the village, is helping them sometimes in everyday duties. After a short conversation, Sylwia decides to rent an upper floor of the house and the field to Otmar. The deal, firstly opposed by the mother, comes into effect due to high rent value. The appearance of Otmar in the village becomes a big event to the local citizens, including journalist Bartek and local entrepreneur Aleksander, a candidate for the head of the village, whose family emigrated to Ukraine from Poland many years ago (we come back to that a little bit later) and to be treated there not as Polish but as Ukrainians.

As the story evolves, Otmar has an opportunity to see Poland from a different perspective than being in a big city. He takes part in an Easter Festival, tries to meet with officials to receive a grant for his winery and invites Sylwia for her birthday to Aleksander's restaurant. Despite his slightly chauvinistic approach to the role of the woman, she agrees. In the meantime, different attitudes arise, about his interest in Sylwia and his Muslim habits, which were not very strict. Not everyone likes his idea to cultivate grapes. All of these issues culminate in the last scene in the restaurant where all of the characters have a chance to present their opinions and the unspeakable conflict reaches its climax. At this point it will be the audience's task to intervene and to test their possible solution to help Otmar or to harm him with the wrong action.

After preparing the script, the project group's task was to memorize and master the acting. But it was not the end. The most important part was to practice possible interventions and proper reactions for each role. Just to give an example – one possible solution to the conflict was a mediation between Otmar and Maciek. In some cases, one may choose a fight and they simply hit each other. Another possibility was to make Sylwia inform Maciek that they are only childhood friends. Of course, there are always plenty of possibilities and each of them can be analysed from a psychological and sociological perspective, social accurateness and many other factors, constituting a separate paper.

After preparing the interventions the play was implemented into the hour-and-a-half workshop containing the method and characters' description, facilitating exercises and evaluation questionnaires. At this point, the project group was ready to test it with a real audience. In part three we describe the test presentation of the play, the impact of COVID-19 on the project and possible future use of the project outcomes.

#### **4. PART THREE**

##### **a. Participants evaluation and project outcomes**

The next step of the project was to present it to the target audience. Before doing so, we wanted also to evaluate the workshop to verify if any improvements are needed and whether the plot is clear enough for the youth. With the project group, we have carried out a test workshop on January 24, 2020 in one of the high schools in Kraków. The workshop group consisted of 19 pupils who participated in the event for two hours. The time planned for the workshop proved to be sufficient for the introduction consisting of project presentation and interviews summary and followed by an explanation of the forum

theatre rules. It also allowed for three pupils to propose and perform their interventions. The pupils were then divided into smaller groups with the actors as discussion leaders. During the discussions, we wanted to ask the students about their feelings during the workshop, any previous experience they might have with both immigration and discrimination, and also their thoughts of dealing with it. Many of them, as we have noticed during the later oral evaluation, had a multi-cultural experience, in many cases because of school international exchanges.

The youth pointed out the difficulties linked to their parents' "closed" attitudes, forbidding some of them participation in the exchanges, their lack of understanding that being different, according to their standards, does not implicate something wrong. Many other issues were raised, and if properly preserved and structured during the future workshops they could provide a solid and interesting database. In general, according to the evaluation questionnaires received after the event, both the pupils and tutors were very satisfied with our proposal including both topic, method and performance.

We were very encouraged and motivated with such outcomes and looking forward to performing other workshops, unfortunately, the pandemic outbreak of COVID-19 forced us to cancel our planned activities. In passing, it is worth mentioning that current regulations of the Education Law [Journal of Laws, 2019 item 1148 as amended, art. 86, par. 2] requires all non-governmental organizations to get the consent of the school or institution's headmaster, based on the positive opinion of the institution board and parent's council. Unfortunately, this requirement can result in a very meticulous procedure which is often preventing external organizations to provide their programmes in schools. That is why it's also important to remember about the applicable regulations and prepare enough time and documents to fulfil obligations. Otherwise, the time needed to recruit schools participating in the project can be quite long.

In the difficult situation of the pandemic, we decided to perform alternative activities instead of the planned workshops. We published a Project Guidebook on our website and we have developed an alternative, online, way of performing the workshop with the use of the virtual communicators. Despite preparing this alternative way of developing the project results in the time given to finish the project we were unable to conduct online workshops as the infrastructure of the schools was insufficient. However, the pandemic did allow us to prepare and develop a different approach to cultural-based projects for the future, which we would like to share in the next, and final, part of the paper along with our further ideas for the use of project results.

### **b. Organizational evaluation and possible further implementation**

The performance of the project was very productive for the project group and association, allowing it to follow the mission of enabling reflection, facilitating dialogue and fighting discrimination with a new tool – the forum theatre workshop. Due to pandemic, the number of workshops performed was lower than planned. This is why the first task for further implementation is to promote the project and perform further workshops both online and in person. The second possibility is to prepare a high-quality video with the Otmar script and adapt it for the non-interactive lessons with the use of prepared materials. It would allow youth workers and teachers to provide at least close experience to the forum theatre method with students as *Spect-actors* and teachers as an actor participating in the intervention. The third option is to extend the plot with new scenes and other topics, such as discrimination of women and gender-equality along with extending the workshop time to a full day. In this case, expanding the audience and target groups would be possible. In the end, the results from the project and outcomes combined with the experience gained allows us to consider the further implementation of the project and the forum theatre method as a tool to maintain and protect diversity in Kraków and possibly other cities.

## **5. CONCLUSION**

In the above article, we presented the project “Let’s meet up...”, carried out by the Polanda Association and funded by the European Solidarity Corps of the European Union. The project addressing the problem of discrimination and xenophobia as well as hate crimes aimed at migrants and other nations was implemented with the use of the forum theatre method. It was intended to facilitate a reflection on migration and hatred. In the article, we described the background of the project, the possible outcomes of implementing a prepared workshop resulting in the protection of the multicultural heritage, and reminding locals from Kraków about the city’s multicultural history. This paper also presented the scope of the script prepared and some possible interventions according to the forum theatre rules.

The article concludes with a short reflection on the pilot test of the workshop, the influence of the COVID-19 pandemic on the implementation of the projects as well as the possible future use of its effect. We believe that the presented scope of the project can be helpful for the implementation of similar projects as well for scholars interested in addressing the issues of migration, discrimination and cultural heritage.

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The reviewed monograph is a successful attempt to scientifically present a wide spectrum of contemporary problems and challenges related to cultural heritage. (...) The publication accurately addresses the postulate of the need for an interdisciplinary debate on issues related to cultural heritage, in legal and non-legal aspects, to the academic community and practitioners.

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The collective monograph is in essence a "collective" work, but not a "common" one. (...) Apart from the introduction, it consists of 14 author's studies. (...) The vast majority of the studies deal with the issues found "on the borderline" of several academic disciplines (or sub-disciplines), therefore the editors rightly point to the interdisciplinary nature of the entire monograph. The second "axis" of the monograph, next to cultural heritage (and its elements), are the legal issues related to its protection. The legal issues "present" are directly or indirectly in the vast majority of the monographs that have a significant cognitive value.

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