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## **Cultural Goods in the Constitution of the Republic of Poland**

**Keywords:** cultural goods, cultural objects, national treasure, to benefit from cultural goods, equal access to cultural goods, national identity

**Słowa kluczowe:** dobra kultury, narodowe dobra kultury, korzystanie z dóbr kultury, równy dostęp do dóbr kultury, tożsamość narodowa

### **Abstract**

The paper is not intended to be a complex determination of the obligations of the Republic of Poland toward cultural heritage and cultural goods being a part of the world heritage of mankind. Its role is to indicate what has been regulated *expressis verbis* in the Constitution of the Republic of Poland. The thesis of the paper is that the Constitution stipulates two – different in terms of their scope – catalogues of “goods of culture”. Article 73 encompasses broadly understood goods of Polish, European and world’s culture. Article 6 sec. 1 encompasses “only” goods of the culture which is the source of identity of the Polish nation, its continuation and development. To make the whole complete, it has been indicated what kind of obligations had been imposed on the bodies of public authorities toward each of the identified catalogues of goods of culture and what kind of concept of nation implicates a wider catalogue of obligations of public authorities toward the “goods of national culture”.

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**Streszczenie****Dobra kultury w Konstytucji Rzeczypospolitej Polskiej**

Niniejsze opracowanie nie pretenduje do miana kompleksowego określenia zobowiązań Rzeczypospolitej względem dziedzictwa kulturowego i dóbr kultury światowej. Jego rolą jest głównie wskazanie na to, co zostało uregulowane *expressis verbis* w Konstytucji RP. Tezą opracowania jest to, że Konstytucja przewiduje dwa – zakresowo różne – katalogi dóbr kultury. Artykuł 73 obejmuje szeroko rozumiane dobra kultury polskiej, europejskiej i światowej. Natomiast art. 6 ust. 1 obejmuje „jedynie” dobra tej kultury, która jest źródłem tożsamości narodu polskiego, jego trwania i rozwoju. Dla dopełnienia całości wskazano, jakiego rodzaju obowiązki nałożone zostały na organy władzy państwowej względem każdego ze zidentyfikowanych katalogów dóbr kultury oraz jakiego rodzaju koncepcja narodu implikuje poszerzony katalog obowiązków władz publicznych względem „dóbr kultury narodowej”.

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**I.**

In the literature of constitutional law is seldom regarded that the Article 6 sec. 1 of the Constitution of the Republic of Poland regards only objects that are a subset of cultural goods stipulated in Article 73 which has been selected due to the culture of Polish nation criterion<sup>2</sup>. The Assumption of this paper is to prove that Article 6 sec. 1 and Article 73 cover different objective scopes and that the constitutional legislator shapes the duties of public authorities in regard to each of them in a different way.

For an English-speaking reader, assuming such thesis may seem absurd, as in this article the author uses terms that are found in legal acts of international and European law, which terms may have different wording (cultural property, cultural goods, cultural objects, national treasure). However, in Polish legal texts (including translations of international legal acts), only one term

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<sup>2</sup> M. Bidziński, M. Chmaj, *Prawne aspekty finansowania opieki nad zabytkami*, [in:] *Prawna ochrona zabytków*, eds. T. Gardocka, J. Sobczak, Toruń 2010, p. 147.

is used, which in literal translation may be worded as “goods of culture” (pl. *dobra kultura*). What is important – in this phrase, the word “good” (*dobro*) is not only a designate for an object or commodity, but may indicate something that has the feature of “being good” (right, propitious) and may refer to intangible objects. The word “culture”, however, is used in its genitive form. The term “*dobro kultura*” is used both as a separate term (in the Article 73 of the Constitution) or in connection with an adjective “national” and in such case we obtain a different, narrower objective scope of such newly build term, while the core of the term remains the same. Another differentiation of the objective scope depends on the fact whether the adjective “national” is connected with a noun “good”<sup>3</sup> or “culture”<sup>4</sup>.

The constitution of the Republic of Poland in Article 5 imposes on the Republic of Poland – as one of the obligations – the obligation to safeguard national heritage. In the literature the term “safeguards” quite often is being used in the same meaning as “protects”. However, Jan Pruszyński arguments the term “safeguards” sets obligations in an abstract matter and has to be specified in provisions of law related to the realization of given cultural functions by all public authorities. The terms “protection” and “care” do not relate to heritage as an abstract being, but to its precise elements<sup>5</sup>.

The regulation of the Constitution of the Republic of Poland is not limited only to the indication of widely and abstractly understood activities undertook in regard to national heritage, but it relates also to cultural

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<sup>3</sup> Act of May 25, 2017 on restitution of national treasures (Dz.U. item 1086). In this act “national treasures” are worded as “national goods of culture” (*narodowe dobra kulturalne*).

<sup>4</sup> The Article 6 sec. 1 of the Constitution of the Republic of Poland uses a descriptive phrase: goods of culture being a source of polish national identity... (*dobry kulturalny, będącej źródłem tożsamości narodu polskiego...*), which may be substituted with a term “goods of national culture” (*dobry kulturalny narodowej*).

<sup>5</sup> J. Pruszyński, *Dziedzictwo kulturalne w świetle Konstytucji Rzeczypospolitej Polskiej z 2 kwietnia 1997 roku*, [in:] *Konstytucja i władza we współczesnym świecie. Doktryna – Prawo – Praktyka. Prace dedykowane Profesorowi Wojciechowi Sokolewiczowi na siedemdziesięciolecie urodzin*, eds. J. Wawrzyniak, M. Kruk, J. Trzeciński, Warsaw 2002, p. 131. For the broad meaning of the term “protects” – as referring to any activities of competent bodies – agrees both doctrine and constitutional judicature; P. Sarnecki, *Rozdział I „Rzeczpospolita”, artykuł 5*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. V, ed. L. Garlicki, Warsaw 2007, p. 2; Judgements of Polish Constitutional Tribunal, October 8, 2007, sign. K 20/07 and May 13, 2009, sign. Kp 2/09.

goods (*dobra kultury*), that cover all types of objects (movable, unmovable, tangible, intangible). In the literature it has been noted that – especially among acts of international law – such solution is rather seldomly used<sup>6</sup>. However, it is regarded that it has its positive aspects, as is it enables the determination of a proper relation between those terms. The term “heritage” is an ideal and abstract concept and therefore supreme in relation to the term of cultural goods<sup>7</sup>. A cultural good, however, is a real category. The range of meaning of the term “a cultural good” encompasses a large enough catalogue of designates, e. g. – as opposed to such objects as historical monuments – cultural goods are comprised of both tangible and intangible, modern and past elements. Cultural goods are therefore such elements of heritage, in regard to which it is possible to undertake activities aimed at protection and care. Elements which fully reflect the concept of cultural heritage belong to the scope of designates of this term<sup>8</sup>. A statement, that including in the act provisions related to national heritage and cultural goods may enable a more complementary protection by adopting proper protection instruments<sup>9</sup>, could be made in relation to the provisions of the Polish Constitution.

## II.

In the context of the problematics that is to be discussed in this article, it is worth to mention that the terms used in the fundamental legal acts are autonomous in character and therefore are broader than the sum of terms used in codex and other legal acts. The process of interpretation of constitutional terms cannot be determined by formulating definitions included in acts of lower ranks, including the content of international agreements. Under such

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<sup>6</sup> M. Frigo, *Cultural property v. cultural heritage: A “battle of concepts” in international law?*, “International Committee of the Red Cross” 2004, vol. 86, No. 854, p. 376.

<sup>7</sup> I. Gredka, *Ubezpieczenia dóbr kultury w muzeach i zbiorach prywatnych*, “Muzeologia. Teoria – Praktyka – Podręczniki” 2013, vol. VI, p. 29.

<sup>8</sup> K. Zeidler, *Prawo ochrony dziedzictwa kultury*, Warsaw 2007, p. 27; therein *Restitution of Cultural Property: Hard Case, Theory of Argumentation, Philosophy of Law*, Gdańsk–Warsaw 2016, p. 114.

<sup>9</sup> M. Frigo, *op.cit.*, pp. 376–377.

assumption, all constitutional guarantees would lose their sense. In the doctrine and judiciary, it has been regarded that the constitutional provisions that should force the method and the way of interpretation of provisions included in lower rank legal acts<sup>10</sup>.

Based on the analysis of provisions of law generally applicable on the territory of the Republic of Poland (which is comprised of legal acts of both national and international law) it should be stated that those provisions do not constitute a system of norms that could construct a definition of a “cultural good” which would fully cover the constitutional, autonomous scope of this term, resulting from the term used in Article 73.

If the legal definitions of cultural goods are to be regarded, then it may be easily noted that they do not fulfill the constitutional scope of this term with their content. The definition of a good of modern culture included in the spatial planning and land development Act relates only to immovable property<sup>11</sup>. The definition found in the Act on found objects<sup>12</sup> relates only to movable goods and omits objects that are private property. Similarly, the definitions of “national treasures” and “cultural objects” used in the Act on restitution of national treasures relate only to movable objects. Furthermore, the definition included in the aforementioned Act uses the criteria of “meaning” for heritage and cultural development that in practice is a criterion impossible to be determined<sup>13</sup>.

One may ask could definitions found in international agreements, that the Republic of Poland is bound with, constitute a form of fulfillment of gaps resulting from incomplete statutory regulation. The Convention for the Protection of Cultural Property in Case of Armed Conflict<sup>14</sup> determines cat-

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<sup>10</sup> Judgements of Polish Constitutional Tribunal of: January 28, 1991, sign. K 13/90; October 20, 1992, sign. K 1/92; March 14, 2000, sign. P 5/99; February 7, 2001, sign. K 27/00; September 23, 2003, sign. K 20/02.

<sup>11</sup> Act of March 27, 2003 on spatial planning and land development (Dz.U. No. 80, item 717 as am.).

<sup>12</sup> Act of February 20, 2015 on found objects (Dz.U. item 397).

<sup>13</sup> J. Pruszyński expressed such opinion in relation to assessing the term “good of a significant value for culture” (art. 294 criminal code). Therein, *Dziedzictwo kultury Polski. Jego straty i ochrona prawna*, vol. II, Kraków 2001, pp. 604–605.

<sup>14</sup> UNESCO Convention for the Protection of Cultural Property in Case of Armed Conflict with Regulations for the Execution of the Convention, Hague, May 14, 1954.

egories of goods that comprise cultural heritage of each country, strongly underlining the integrity of cultural heritage with the territory of a state. However, this act presents a definition of “cultural property” that encompasses with the scope of its protection tangible goods – both movable and immovable, as both might be endangered in the place in which an armed conflict takes place.

The definition of “cultural property” has been adopted also in the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transport of Ownership of Cultural Property<sup>15</sup>. It regards as cultural property eleven categories of objects, which, due to religious or secular reasons, are regarded by each country as having meaning for archaeology, pre-history, literature, art or science. What is important, in the catalogue of goods, the first place is occupied by objects from the field of zoology, botanic, mineralogy, anatomy and subjects from palaeontology field. This move indicated a direction for international and supranational deliberations assumed in the future years. With regard to the aforementioned, the scope of the broad constitutional term “cultural goods” found in the Article 73 of the Constitution should be interpreted and regard that also goods of environment belong within its range. At the same time, it should be noted that the Convention limits the scope of cultural property only to movable goods, what is dictated by its purpose which is the protection against illicit transfer of cultural property through borders and transferring their ownership.

It should be also noted that none of the aforementioned acts relate to intangible cultural goods<sup>16</sup>. Based on the analysis of provisions of law generally applicable in the Republic of Poland, it should be noted that they are not a system of norms that could construct full definition of a cultural good and therefore there is a risk that there are cultural goods in a constitutional meaning that will not be encompassed by the legal guarantees of protection.

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<sup>15</sup> UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transport of Ownership of Cultural Property, Paris, November 17, 1970.

<sup>16</sup> On the analysis of the Polish law-making activity related to goods of culture and its assessment from the point of view of the constitutional meaning of this term see A. Frankiewicz-Bodynek, *Konstytucyjna regulacja dziedzictwa narodowego oraz dóbr kultury*, Toruń 2019, pp. 221–251.

### III.

The interpretation of autonomous constitutional terms should be made “based on the Constitution and context in which the term is used, as well as with regard to the system of constitutional values which the institution is to serve”. Therefore, if the determined term is used in different provisions of the Constitution, it may assume a different content in each of the provisions, due to different function of the institution stipulated therein<sup>17</sup>. This idea should be related to the mutual relation between the scope and meaning of the term of “a cultural good” (art. 73) and the term “good of culture being a source of identity of the Polish nation, its continuation and development” (art. 6 sec. 1). It is worth mentioning that in the face of – the highlighted at the beginning – terminology differences and translation difficulties, in the hereby text particular provisions of the Constitution shall not be cited in their literal meaning, instead their meaning (sense) shall be provided, thus making the idea of a provision understandable for an English-speaking reader.

In the Article 73 of the Constitution of the Republic of Poland one may find a broad meaning of “cultural goods”. The constitutional legislator stipulates that everyone is free to benefit from cultural goods. Even though he had not formulated a definition of these goods, the Constitutional Tribunal assumed that the constitutional legislator had taken into consideration also a meaning that, “before entering the Constitution into force, had been already existing and relevant for national and international law”<sup>18</sup>. This judgment shows reference to the concept of existing terms in the process of interpretation of constitutional provisions. The term stipulated in Article 73 has therefore broad, autonomous scope of designates. It encompasses values and intangible phe-

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<sup>17</sup> J. Trzeciński, *Znaczenie autonomicznej wykładni konstytucji na przykładzie orzecznictwa sądów administracyjnych*, [in:] *Wykładnia konstytucji. Aktualne problemy i tendencje*, ed. M. Smolak, Warsaw 2016, p. 57.

<sup>18</sup> Discussing existing terms, the Tribunal referred to, i.a., the Article 2 of the Act of February 2, 1962 on the protection of cultural goods and museums, the Article 1 of the Convention of 1954, Article 36 Treaty on European Union and the Treaty on the Functioning of the European Union. Referring to European law, the Tribunal decided that it is necessary to take into consideration that “cultural good” should be categorized in regard to the criteria of artistic, historic or archeological value. Judgement of Polish Constitutional Tribunal, May 25, 2016, sign. Kp 2/15.

nomena and tangible goods (movable and immovable), their parts or teams, that remain in the sphere of heritage and cultural development, which should be saved and protected due to historical, scientific, artistic and environmental values. In particular, in order to be recognized as a cultural good, the element of age of the good is not important, instead the fact that the good reflects values supported by people, or it is a good that enables to protect other values and goods, is important<sup>19</sup>. At the same time, the term cultural good encompasses subjects that meet the criteria that allow to include them to the broadly understood European and world heritage.

In the Article 6 sec. 1 of the Constitution of the Republic of Poland, the constitutional legislator determines that the Republic of Poland creates the conditions of propagation and equal access to goods of culture that is the source of identity of the “Polish nation”<sup>20</sup>, its continuation and development. The provision therefore assumes that it is culture and not only its goods that determine the identity of the “Polish nation”<sup>21</sup>. It is necessary to stress that the reference in the article to the concept of nation differs from other provisions of the Constitution of the Republic of Poland. Generally, the constitutional legislator refers in it to the political or social and philosophic understanding of the term “nation”<sup>22</sup>. This is proven by, i. a. writing the term Polish Nation and Nation with capital letters<sup>23</sup>. At the same time, in the Article 6 sec. 1, this term has been written in small letters, due to what the word “polish” assumes a different meaning. The Constitutional Tribunal decided that the “Polish nation” is composed of people who identify themselves with val-

<sup>19</sup> A. Frankiewicz-Bodynek, *op.cit.*, p. 208.

<sup>20</sup> The actual spelling of the term “Polish nation” – in provision of the Article 6 sec. 1 of the Constitution of the Republic of Poland using small letters – has a deep sense and is essentially justified. As opposed to English language, this is not a spelling mistake, but is an expression of a given concept of the nation, made by the constitutional legislator.

<sup>21</sup> This has been indicated even during discussions in the Constitutional Commission of the National Assembly, as well as in the literature, in particular after the year 2000: J. Pruszyński, *Dziedzictwo kultury Polski...*, p. 515; *idem*, *Dziedzictwo kultury w świetle...*, p. 136; J. Skoczyński, *Kultura*, [in:] *Słownik społeczny*, ed. B. Szlachta, Kraków 2004; A.M. Kosińska, *Kulturalne prawa człowieka. Regulacje normatywne i ich realizacja*, Lublin 2014, p. 200.

<sup>22</sup> L. Garlicki, *Polskie prawo konstytucyjne. Zarys wykładu*, Warsaw 2016, pp. 69–70; Judgement of Polish Constitutional Tribunal of September 21, 2015, sign. K 28/13.

<sup>23</sup> W. Sokolewicz, *Rozdział I „Rzeczpospolita”, artykuł 1*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. V, p. 24.



ues that proves one to be Polish. The concept of nation expressed in Article 6 sec. 1 relates to cultural community, which the Tribunal seems to define as a community existing through ages, connected by different bonds – including bonds of blood, language, culture, religion – which in different circumstances and different times are regarded as primary ones<sup>24</sup>. A cultural nation is a community which cultivates culture of the “Polish nation” as historically borne, permanent community of “people connected by the unity of language, history, culture expressing in awareness of national bonds of its members”<sup>25</sup>. The findings herein enable to determine objects to which Article 6 sec. 1 refers as “goods of national culture”<sup>26</sup>.

Due to this fact, the material scope of “goods of culture” (*dobra kultury*) as stipulated in the Article 6 sec. 1 and Article 73 (despite using the term in a deceptively similar wording) of the Constitution of the Republic of Poland, cannot be regarded as relating to the same group of designates. The phrase “goods of culture that is the source of identity...” from the first of the aforementioned articles should be interpreted closely with its precisising term and – in regard to a resolution of seven judges of the Supreme Administrative Court<sup>27</sup> – it should be regarded that the legislator had been rational when he used such terms, and that the terms had not been used in a legal text without an intent, that they are not empty or that they are meaningless. Legal constructs are created using words in such way that they compose a given whole, and therefore they cannot be interpreted without regard to the whole construct.

It should be stressed that the interpretation of the term “cultural goods” based on the criterion of culture that decides about the identification of members of a community with being Polish results in narrowing the catalogue of these goods. The interpretation does not violate the prohibition of homonymic interpretation. The fact that the scope of activities indicated in this article should

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<sup>24</sup> Judgement of Polish Constitutional Tribunal of September 21, 2015, sign. K 28/13.

<sup>25</sup> W. Skrzydło, *Konstytucja Rzeczypospolitej. Komentarz*, Warsaw 2013, p. 20.

<sup>26</sup> The term “goods of national culture” is not identical with the term “national treasures”. The latter definition had been introduced by the Act on restitution of national treasures. This term is also broader. However, a detailed differentiation of these two terms remains beyond the scope of the hereby paper. In short, it may be indicated that national treasures are only physical, movable goods selected by criteria that refer to economic value.

<sup>27</sup> A Resolution of Judges of the Supreme Administrative Court, June 22, 1998, sign. FPS 9/97.

not include goods of each culture cultivated on the territory of the Republic of Poland, but only goods of culture which is the source of identity of the “polish nation”, its continuance and development, result from the whole of its expression.

In the constitutional literature one may find an answer that to “goods of national culture” as stipulated in Article 6 sec. 1 one may include “objects, means and values that sum up to material and spiritual achievement of the “Polish nation”. Due to multi-ethnicity of the society of the Republic of Poland in the past, this achievement is a source of identity not only for the nation understood by means of ethnicity, but the whole community shaped by people of different national and ethical membership. It exposes common historical experiences, permanent social behaviors and permanently renewed symbols. In this context, cultural goods become an agent uniting unit and create common memory and social sensibility based on them”<sup>28</sup>. What is important – “goods of national culture” may represent any type of value, not only historical one. Therefore, they may represent artistic or scientific value, what allows to grant them a feature of universal cultural goods. However, there largest value (*metavalue*) results from identification with that what decides about the identity of “Polish nation”, and not its economical value nor age of a given good. It is worth mentioning that goods of national culture – similar as broader understood cultural goods – are comprised of both tangible and intangible objects. Tangible objects shall be understood as all historical monuments and other elements of cultural heritage (museum artefacts, bibliography objects etc.), even if they are not monuments, as long as they meet the criteria of value for the culture of “Polish nation”. Intangible objects shall comprise of language and national symbols<sup>29</sup> as well e.g. historical names of cities, places or streets, customs, traditions, as well as data carriers of data that constitute cultural goods.

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<sup>28</sup> B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warsaw 2009, p. 55.

<sup>29</sup> Those elements are the most important examples of intangible goods having the utmost importance for national cultural heritage. Due to their bond to the culture of a given nation, the lawgiver guaranteed them additional protection by placing them in Chapter I of the Constitution of the Republic of Poland. M.M. Wiszowaty, *Symbole państwowe III Rzeczypospolitej Polskiej*, “Państwo i Prawo” 2011, No. 7–8, p. 41. In this context, placing the regulations regarding symbols in the latter part of the Constitution of 1952 is most unfortunate. R. Grabowski, *The evolution of the National Emblem and the Coat of Arms of the Republic of Poland as a result of the structural transformation of 1989*, “International Journal of Public Administration in Central and Eastern Europe” 2010, No. 1, p. 81.

Should we regard the assumptions of constitutional concept of goods of national culture and historical experiences of Poland as multi-ethnic and multi-national state, it should be noted that common experiences, memory and social sensitivity are a borderline. On one of its side we may find a catalogue of goods of national culture that is respected by the Poles and which citizens that are members of minorities absorbed during their long stay on the territory of Poland, and which they regard as important for their own identity (elements of which culture are, e.g. Polish language, symbols and history, songs, national and religious holiday events). On the other side of the borderline we may find other cultural goods, universal in character, including goods of culture of people with Polish citizenship, who are members of national and ethnic minorities, which are related to cultivating only their national culture which does not refer to being Polish (Ukrainian, Byelorussian, Tatar, German values expressed in particular traditions, customs and produced objects). As J. Sobczak stated it is undoubtful that goods of culture that is source of identity of Armenians, Tatars, Karaims, Germans, Jews that are Polish citizens are different from these goods of culture, which is the source of identity of the Polish nation as an ethnical nation<sup>30</sup>. The author also concludes that this differentiation is justified also by a joint analysis of contents of the Article 6 sec. 1 and Article 35 of the Constitution of the Republic of Poland<sup>31</sup>.

#### IV.

As indicated hereinbefore, according to the Article 73 of the Constitution of the Republic of Poland, everyone is free to benefit from cultural goods. “The freedom to benefit from cultural goods” means the possibility to benefit from

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<sup>30</sup> J. Sobczak, *Tożsamość narodowa jako zagadnienie konstytucyjne*, [in:] *Dookoła Wojtek... Księga pamiątkowa poświęcona Doktorowi, Arturowi Wojciechowi Preisnerowi*, eds. R. Balicki, M. Jabłoński, Wrocław 2018, p. 167.

<sup>31</sup> J. Sobczak, *Wolność korzystania z dóbr kultury – standardy europejskie i konstytucyjna rzeczywistość polska*, [in:] *Prawna ochrona dóbr kultury*, eds. T. Gardocka, J. Sobczak, Toruń 2009, p. 11. The Article 35 of the Constitution grants members of national and ethnic minorities the freedom to keep and develop their own cultural heritage. Therefore, for their identity, based on different origins and culture, goods of different kind are decisive. A. Frankiewicz-Bodynek, *op.cit.*, p. 213.

values, basing on content drawn from cultural goods. The meaning of the analyzed provision sets in enabling – through public authorities – the interested people to familiarize with results of artistic activity by familiarizing with a cultural good they are interested in<sup>32</sup>. It is a freedom to be in contact and familiarize with a cultural good<sup>33</sup>, the essence of which is the freedom of everyone as to the possibility to enjoy cultural goods, and to the extent of familiarization with the message resulting from this good. Except for withholding from interfering with the freedom of usage of cultural goods – the public authority is obligated to organize and maintain a proper system of the goods' protection<sup>34</sup>. The guaranteed freedom of using cultural goods sets in also in observing the principle of equality and prohibition of discrimination<sup>35</sup>. It is necessary to stress however, that the freedom of using cultural goods may not become grounds for any claims related to unpaid access to these goods<sup>36</sup>.

All of the obligations of authorities related to the guarantee of freedom of benefit should be related to “goods of national culture”. Article 6 sec. 1 shapes additional obligations of the Republic of Poland. It stipulates the necessity of creating conditions of propagation and equal access to these goods. In con-

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<sup>32</sup> The obligation of making the broadly understood goods of culture accessible result from provisions of legal acts and international obligations of the Republic of Poland. In the Constitution of the Republic of Poland, general grounds for their realization may be found, in the form of “the knowledge of the necessity of cooperation with all countries for the good of Mankind” (introduction) and observing international law that bonds the Republic of Poland (art. 9) as well as regarding ratified international agreements as sources of generally applicable law (art. 87).

<sup>33</sup> M. Jabłoński, *Wolności z art. 73 Konstytucji RP*, [in:] *Prawa i wolności obywatelskie w Konstytucji RP*, eds. B. Banaszak, A. Preisner, Warsaw 2002, pp. 558, 563; L. Garlicki, *Rozdział II, „Wolności, prawa i obowiązki człowieka i obywatela”, artykuł 73*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. III, ed. L. Garlicki, Warsaw 2003, pp. 8–9; G. Pastuszko, *Wolność twórczości artystycznej, badań naukowych, nauczania oraz korzystania z dóbr kultury*, [in:] *Wolności i prawa ekonomiczne, socjalne i kulturalne w Konstytucji RP z 1997 roku*, ed. H. Zięba-Załucka, Rzeszów 2018, p. 229.

<sup>34</sup> M. Jabłoński, *op.cit.*, p. 560; M. Dreła, *Prawne aspekty rozpowszechniania wyglądu muzealiów*, [in:] *Prawo muzeów*, eds. K. Zeidler, K. Włodarski, Warsaw 2008, pp. 102–104.

<sup>35</sup> Provisions of law may not limit any group of individuals in the possibility of executing their freedom consisting in the possibility to commune with an object incorporating a good of culture within or seeing it in natural state. M. Dreła, *Własność zabytków*, Warsaw 2006, p. 22.

<sup>36</sup> M. Jabłoński, *op.cit.*, p. 561; W. Kowalski, K. Zalańska, *Prawo do wyglądu muzealiów i ich fotografowania*, “Państwo i Prawo” 2013, vol. 2, pp. 77–78.

stitutional literature it is explained that “propagation” should be understood as conducting as broad as possible informative activity about the existence of a given type of goods (mainly popularization)<sup>37</sup>. In pedagogics of culture it is said that the term “propagation” has a deep educational value. It consists in creating a situation in which culture becomes an active and creative attitude of members of a society. To achieve this goal, the internalization of values that remain in culture is important, i.e. making them an active element of the human personality<sup>38</sup>. The propagation of art is a set of activities aimed at reaching as broad recipient number as possible with works of art<sup>39</sup>. Referring these findings to propagation of “goods of national culture” allow us to determine that the aim of activity stipulated in the content of Article 6 sec. 1 is to cause the values that remain in “goods of national culture” to become an active element of identity of a human being. The task given to the Republic of Poland consists in such presentation of given objects that will suggest, persuade and encourage to acquire values remaining in goods of culture of the “Polish nation”. Such activities exclude to some extent the freedom of reception. As an effect of using by the constitutional legislator the logical connector “and”, creating access to goods of national culture is an activity commanded to the same extent as propagation, and at the same time it should enable reaching the aim of propagation<sup>40</sup>. The provision of Article 6 sec. 1 therefore stipulates tasks important for the process of creation of a community. This kind of disposition has not been foreseen in regard to cultural goods as stipulated in Article 73. Creation of conditions for propagation and making goods of national culture accessible will not realized by simple making works of art, monuments or content of museums accessible.

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<sup>37</sup> P. Sarnecki, *Rozdział I „Rzeczpospolita”, artykuł 6*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. V, ed. L. Garlicki, Warsaw 2007, p. 1.

<sup>38</sup> T. Gołaszewski, *Kultura to my. Upowszechnianie kultury – nie tylko problem akademicki*, [in:] *Kultura. Wartości. Kształcenie. Księga dedykowana Profesorowi Januszowi Gajdzie*, ed. D. Kubinowski, Toruń 2003, p. 313.

<sup>39</sup> S. Szuman, *O sztuce i wychowaniu estetycznym*, “Wychowanie Przez Sztukę”, 5.01.2013, <https://wychowanieprzezsztuke.wordpress.com/2013/01/05/zasada-3xu> (1.02.2019); M.M. Tytko, *Problemy kultury plastycznej w edukacji*, [in:] *Kultura artystyczna w przestrzeni wychowania*, ed. B. Żurawski, Kraków 2011, p. 28.

<sup>40</sup> “[A]ccessibility is only a technical condition related to propagation of goods of national culture”. W. Kowalski, K. Zalasieńska, *op.cit.*, p. 75.

## V.

The analysis of provisions of the Constitution of the Republic of Poland allows to determine that the constitutional legislator has adopted a concept of relation of the nation to the state assuming the important meaning of national community and its culture. According to this assumption, the aim of the nation, as a cultural Community is to establish a state and to exist within its borders, as it is the state that may serve the protection of values supported by this community in the best way<sup>41</sup>. Sources of this philosophy may be found in the content of the introduction to the Constitution of the Republic of Poland, as it stipulates that “the Polish nation – which is grateful to its ancestors for culture – establishes the constitution of the Republic of Poland as the fundamental law for the state”. Another provision supporting including the affirmation concept is the separation of “goods of national culture” and indicating additional obligations of the Republic of Poland toward them – which were not foreseen in regard to the general category of cultural goods. In the content of this article the constitutional legislator refers to the nation as a community “existing and developing basing on the feeling of identity built on a common culture”<sup>42</sup>, and not based on nor due to the state.

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<sup>41</sup> These are the assumptions of a middle European concept of a nation, according to which the nation and culture created by the nation are the reasons of coming into existence and existence of states and public authorities. This concept was promoted by F. Znaniecki; see F. Znaniecki, *Cultural Sciences. Their Origin Development*, University of Illinois Press, 1952. An opposite concept – west European assumes that it is the state that uses language and culture as tools for political unification. As an effect of educational activities, it causes their unification and transforms indefinite people into a political community. W. Konarski, *Naród, mniejszość, nacjonalizm, religia – przyczynek do dyskursu o pojęciach i powiązaniach między nimi*, “Forum Politologiczne” 2007, vol. V, pp. 19–23, 26, 36; A. Chmielewska, *Naród – państwo – tożsamość. Odmienność perspektyw starych i nowych państw członkowskich Unii Europejskiej*, “Studia Europejskie” 2006, No. 1, pp. 29–33.

<sup>42</sup> A. Młynarska-Sobaczewska, *Normatywizacja tożsamości zbiorowej w preambułach do konstytucji państw postkomunistycznych*, “Filozofia Publiczna i Edukacja Demokratyczna” 2013, vol. II, No. 2, pp. 109, 131.

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